

Memorandum

HELIX Environmental Planning, Inc.
1180 Iron Point Road, Suite 130
Folsom, CA 95630
916.435.1205 tel
www.helixepi.com



Date: July 1, 2023

To: County of Tuolumne Community Development Department

From: HELIX Environmental Planning

Subject: Tuolumne County Broadband Infrastructure EIR Public Scoping Comment Summary

Message: This Memorandum summarizes written and verbal comments received during the public scoping period conducted by Tuolumne County (County) and HELIX Environmental Planning (HELIX) to support the Draft Environmental Impact Report (DEIR) for the County of Tuolumne Broadband Infrastructure Environmental Impact Report Project (proposed project). The proposed project involves expanding access to broadband technology throughout the County by installing fiber optic conduit either underground in buried conduits, overhead on pole lines, or in a combination of both. The future broadband infrastructure would be installed within existing County maintained road rights-of-way (ROW), public utility easement (PUE), and/or overhead PUE of record throughout the County.

This Memorandum includes topics raised by members of the public during the in-person, public scoping meeting and written comments submitted during the Notice of Preparation (NOP) comment period. The NOP is included as Appendix A.

Overview

To assist the County in determining the focus and scope of the analysis for the EIR for the proposed project and in accordance with the requirements of the California Environmental Quality Act (CEQA), the County issued a NOP per CEQA Guidelines Section 15082 on May 1, 2023, to government agencies, special service districts, and individuals with an interest in or jurisdiction over the project. This step ensures early consultation on the scope of the EIR. The comment period closed on May 30, 2023.

The NOP is a brief notice sent by the County as CEQA Lead Agency for the proposed project to inform responsible agencies, trustee agencies, and potentially affected federal, State, and local agencies that the County plans to prepare an EIR. Tuolumne County conducted one, in-person public scoping meeting for this project, held on Wednesday, May 10th, 2023.

The meeting was attended by two Internet Service Providers (ISP)/community members. County and HELIX staff provided an overview of the proposed project and potential environmental impacts, as identified in the NOP. Participants were then provided an opportunity to ask questions and clarify their understanding of the project description, and to provide comments regarding potential environmental impacts, content of the proposed project, and the CEQA processes associated with the proposed project. Questions were addressed by County staff and/or HELIX staff.

Questions and Answers

Several questions addressed the following issues, with corresponding responses from the project team:

- ***What is considered a major wireless facility according to the County ordinance?*** According to the County ordinance, a major wireless communications facility is a utility pole-mounted internet equipment serving more than the individual lot the said pole is mounted on, multiple users, or other additional sites. A minor communication wireless facility is a facility accessory to and located on the same site as a residential, commercial, industrial, agricultural or recreational use, the principal use of which is to provide service to the occupants of the parcel on which the facility is located. Minor communication wireless facilities include but are not limited to, a ground or structure-mounted radio, television, or satellite dish antenna, or unlicensed band, broad band, or high band antenna, internet repeater antenna, or other antenna related to wireless internet service, including any mast.
- ***Will broadband infrastructure be located on private roads?*** The area in which broadband infrastructure would be installed excludes federal lands, private roads, and State highway ROW. The broadband infrastructure would be installed within existing County ROW, PUE, and/or overhead PUE of record throughout the County.

Scoping Comments and Key Findings

Scoping meeting participants provided input on a wide variety of issues. Several key findings emerged from the scoping meeting comments.

- A commenter noted that underground broadband installation is more expensive to install; however, it is easier to manage than aerial broadband due to weather conditions in the area.
- A commenter noted that aerial installation is less expensive to install; however, it is more of a liability due to environmental hazards.
- A commenter noted that with underground broadband installation, there is a possibility that one could dig into existing unmarked infrastructure throughout the County. It was also noted that microtrenching is more difficult with underground installation.

NOP Comment Letters

Agency Comments

In addition to the comments received during the public scoping meeting, the County also received four comment letters from agencies during the public comment period. A letter from the Native American Heritage Commission (NAHC) was received on May 2, 2023, a letter from the California Department of Transportation (Caltrans) was received on May 25, 2023, a letter from the California Department of Fish and Wildlife (CDFW) was received on May 30, 2023, and a letter from the Central Valley Regional Water Quality Control Board (CVRWQCB) was received on May 30, 2023. The comment letters are included as Appendix B.

1. The comment letter from NAHC recommended consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of the project as

early as possible to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. The NAHC recommended consultation with legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws. This information will be incorporated into the EIR as appropriate.

2. The comment letter from Caltrans noted to ensure coordination with Caltrans' Broadband Middle Mile efforts. The letter noted that if construction will encroach into Caltrans ROW, the project proponent must apply for an Encroachment Permit to the Caltrans District 10 Encroachment Permit Office. Caltrans noted that the developer needs to ensure existing State drainage facilities will not be impacted by the proposed project and requested to review the pre- and post-construction runoff calculations, drainage plans, and the floodplain study. This information will be incorporated into the EIR as appropriate.
3. The comment letter from CDFW recommended that habitat assessments be conducted in and surrounding all locations for planned broadband work and to identify all potential plant, animal, invertebrate, and fish species that could be present. For the species that could be present, CDFW recommended the preparation of cumulative impact analyses for each of the potentially present species along with avoid, minimization, and mitigation measures that could be implemented on each project to reduce harm. CDFW also recommended that survey-level protocols and focused surveys be conducted for the potentially present species as part of the biological technical studies prepared for each future CEQA document tiered from the PEIR. This information will be incorporated into the EIR as appropriate.
4. The comment letter from CVRWQCB noted that a Basin Plan is required if a project is located in an area within the Central Valley regional area under Section 13240 of the Porter-Cologne Water Quality Control Act. The Basin Plan must include water quality objectives to ensure reasonable protection and must include a program of implementation. The CVRWQCB also noted that all wastewater discharges must comply with the Antidegradation Policy. The CVRWQCB listed permits that may be required, including Construction Storm Water General Permit, Clean Water Act Section 404 Permit, Clean Water Act Section 401 Permit – Water Quality Certification, Waste Discharge Requirements – Discharges to the Waters of the State, Dewatering Permit, Limited Threat General National Pollutant Discharge Elimination System (NPDES) Permit, and NPDES Permit. This information will be incorporated into the EIR as appropriate.

Public Comments

The County also received two comments from the public during the public comment period. The two comments were received on May 2, 2023.

1. The comment from Wayne Collins noted that because the current wireless communication facilities County ordinance is a one size fits all, it limits the ability to serve neighborhoods with smaller sites. The County categorizes any mast, telephone pole, or tower as a major wireless facility, even in utility easements. This information will be incorporated into the EIR as appropriate.

2. The comment from Eric Elms noted that the Tuolumne Rancheria (MiWuk) might present challenges on trenching in their reservation area, and permissions would be needed. This information will be incorporated into the EIR as appropriate.

Next Steps

The County will document and consider comments received during the NOP scoping meetings and identified in NOP comment letters during the public review period in the Draft EIR prepared for the proposed project. The Draft EIR is anticipated to be available for public review and comment in fall or winter of 2023.

Appendices

- A. Notice of Preparation
- B. NOP Comment Letters

Appendix A

Notice of Preparation

NOTICE OF PREPARATION AND SCOPING MEETING

County of Tuolumne Broadband Infrastructure Environmental Impact Report

Project Title: County of Tuolumne Broadband Infrastructure Environmental Impact Report

Project Applicant: County of Tuolumne

Comment Period: May 1, 2023 – May 30, 2023

Scoping Meeting: May 10, 2023

Lead Agency: County of Tuolumne

Contact (CEQA): Quincy Yaley, Director
County of Tuolumne, Community Development Department
2 South Green Street
Sonora, CA 95370
gyaley@co.tuolumne.ca.us

Contact (NEPA): Marina MacLatchie, Federal Program Officer
National Telecommunications and Information Administration
mmaclatchie@ntia.gov

Notice is hereby given that the County of Tuolumne (County) will be the Lead Agency in preparation of a program Environmental Impact Report (EIR) consistent with California Environmental Quality Act (CEQA) Guidelines (14 California Code of Regulations Section 1500, et seq.), that addresses the potential physical environmental effects of a countywide Broadband Infrastructure Environmental Impact Report Project (proposed project). In accordance with CEQA Guidelines Section 15082, the County has prepared this Notice of Preparation (NOP), along with the subsequent Initial Study (IS) (Appendix A) to provide responsible agencies and other interested parties with sufficient information describing the proposal and its potential environmental effects to meaningfully respond. Additionally, an Environmental Assessment (EA) will be appended to the program EIR as required for the Broadband Equity, Access, and Deployment (BEAD) Program. The EA will be prepared with the National Telecommunications and Information Administration (NITA) (under provision of the U.S. Department of Commerce) as the Federal Lead and will be consistent with the National Environmental Policy Act (NEPA).

PROJECT SETTING AND LOCATION

The proposed project area would be located within Tuolumne County limits. Tuolumne County, California is located in the center of the California Mother Lode region, along the western slope of the Sierra Nevada mountains. Tuolumne County is bordered to the north by Alpine and Calaveras Counties, to the west by Calaveras and Stanislaus Counties, to the south by Merced and Mariposa Counties, and to the east by Mono County. Sonora is the only incorporated city within the County; however, there are other several unincorporated communities located throughout the County, such as Jamestown, Columbia, Tuolumne City, Groveland, and Twain Harte. Tuolumne County encompasses approximately 2,274 total square miles, or 1,455,360 acres.

The area in which future broadband infrastructure could be implemented includes all unincorporated areas of the County and the incorporated City of Sonora; it excludes federal lands, private roads, and

state highway rights-of-way. The County has jurisdiction over a total of approximately 610 miles of County-maintained roads. It is envisioned that the vast majority of the future broadband infrastructure would be installed within existing County maintained road rights-of-way (ROW), public utility easements (PUE), and/or overhead public utility easements of record throughout the County. The exact alignments of future broadband are unknown at this time and would be planned based on such considerations as construction feasibility, local preference, and locations of sensitive environmental resources.

PROJECT BACKGROUND AND NEED

Broadband provides high-speed internet access via multiple types of technologies, including fiber optics, wireless, cable, digital subscriber line (DSL), and satellite. While some areas of the County have sufficient internet speeds for daily work and home life, there are still large portions of the County with no coverage or coverage so slow that it has become prohibitive to perform daily, essential tasks.

The ability to provide broadband internet in the County has been challenging for a several reasons. Primarily, the topography and geography of the County present physical barriers to broadband connectivity. Subsurface rock throughout the County is difficult and expensive to trench while dense forests, hills, and canyons may obstruct the sight lines needed for wireless technology. Finally, the rural nature of the County results in low population densities to attract market-rate broadband infrastructure investors.

Currently, Tuolumne County has 13,826 Broadband Service Locations (BSL) (or 45 percent of all BSL within the County) that lack access to wireline broadband of speeds of up to 25/3 megabits per second (Mbps). Areas are considered “unserved” per the State of California definition of having less than 25/3 Mbps of service. These pockets of unserved, or even underserved, populations in California are missing out on what is now seen as a utility critical to quality of life. This Countywide project would help attract broadband infrastructure investors to bring broadband service to a County in need of reliable connectivity for increasing health and safety factors, as well as for economic and quality of life reasons. Expansion of broadband service and its associated infrastructure is vital to the various communities in the County for many reasons, which include:

- building social and community connections,
- enhancing civic engagement and participation,
- bolstering economic development and sustainability,
- increasing education and continuous learning,
- fostering health care and tele-health services, and
- promoting recreation and tourism.

PROJECT DESCRIPTION

As the Lead Agency, the County is proposing to expand access to broadband technology throughout County, including the unincorporated areas of the County and the one incorporated City of Sonora. Location and installation of fiber optic cable by a variety of potential methods (e.g., underground, and aerial installation) would be evaluated at a programmatic level in the EIR for the County as a whole.

The Countywide program would install fiber optic conduit either underground in buried conduits, overhead on pole lines, or in a combination of both. In some circumstances, fiber optic conduit could be installed under roadways where space is limited alongside the roadways. Where topography or

underground substrate would prohibit or impede construction of subsurface fiber optic cables, projects would install aboveground fiber optic cables that would utilize existing or newly constructed utility poles.

The County includes a total of approximately 610 miles of County-maintained roads. The installation of underground or overhead cables would be located within existing County maintained road ROW, public utility easements, and/or overhead public utility easements of record throughout the County. The future location of broadband infrastructure would focus on areas of the County that are currently unserved or underserved. The exact alignment of future broadband infrastructure is unknown at this time and would be based on such considerations as construction feasibility, local preference, and locations of sensitive environmental resources.

The objective of this programmatic level EIR is to achieve compliance with CEQA for the proposed Countywide program in advance such that individual fiber installers can take advantage of grant funding expected to be available through the California Emerging Technology Fund (CETF). CETF provides leadership statewide to close the “digital divide” by accelerating the deployment and adoption of broadband to unserved and underserved communities and populations.

REQUIRED APPROVALS

Actions that would be required from the County may include the following for the proposed project:

- Certification of the EIR;
- Adoption of a Mitigation Monitoring and Reporting Program;
- Adoption of CEQA findings; and
- Approval of a use permit and an encroachment permit.

Depending on the project-specific character, location, and construction techniques of future broadband projects, potential permits and approvals that could be required are identified in Table 1.

Table 1: Potential Permits and Approvals

Agency	Permits or Approvals
U.S. Army Corps of Engineers	• Nationwide Permit or Individual Permit under Section 404 of the Clean Water Act
U.S. Forest Service	• Construction easements
Central Valley Regional Water Quality Control Board	• National Pollutant Discharge Elimination Construction General Permit • Section 401 water quality certification or a waiver of discharge requirements
California Department of Fish and Wildlife	• Lake and streambed alteration agreement Section 1602 of the Fish and Game Code
City of Sonoma	• Use permits, encroachment permits
County of Tuolumne	• Use permits, encroachment permits

EIR SCOPE

The EIR will evaluate the proposed project for potential impacts on the environment and determine the potential environmental consequences of future change. The attached Initial Study (Appendix A) identifies environmental topics that the County anticipates will be addressed in the EIR. Project impacts

identified in the Initial Study which would result in either “no impact” or a “less than significant impact” would not be further addressed in the EIR unless otherwise noted in the Initial Study or unless a comment is received on the NOP/IS requesting the issue be further analyzed in the EIR. The Initial Study notes that these environmental topics will be further addressed in the EIR:

- Aesthetics
- Air Quality
- Biological Resources
- Cultural Resources
- Geology and Soils
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Noise
- Transportation
- Tribal Cultural Resources
- Utilities and Service Systems
- Wildfire

Cumulative impacts will consider impacts of relevant projects in and around the project area combined with those of the project. An evaluation of project alternatives that could reduce significant impacts will also be included in the EIR.

To ensure that the EIR for this proposed project is thorough and adequate and ensure that the issues of concern to the public and public agencies are addressed, the County is requesting comments and guidance on the scope and content of the EIR from interested public agencies, organizations, and individuals. Public comments on the scope of issues to be evaluated in the EIR are encouraged. With respect to the views of Responsible and Trustee Agencies as to significant environmental issues, the County needs to know the reasonable alternatives and mitigation measures that are germane to each agency's statutory responsibilities in connection with the project.

ALTERNATIVES

In accordance with Section 15126.6 of the CEQA Guidelines, an EIR must “describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project and evaluate the comparative merits of the alternatives.” As required by CEQA, the EIR will evaluate a No Project Alternative. Aside from the No Project Alternative, the County has not yet determined what additional alternatives to the project will be evaluated in the EIR. These will be identified during the environmental review process. Once selected, the alternatives will be analyzed at a qualitative level of detail in the Draft EIR for comparison against the impacts identified for the project, consistent with the requirements of CEQA.

SCOPING MEETING

A Public Scoping Meeting would be held on May 10, 2023 from 6:30pm-8:30pm in the Tuolumne County Board of Supervisors chambers located at 2 South Green Street, Sonora, CA. No additional scoping meeting is currently planned for this time.

PUBLIC REVIEW PERIOD

As specified by the CEQA Guidelines, the NOP will be circulated for a 30-day review period. The public review period is from May 1, 2023 to May 30, 2023. Please send all written comments to Quincy Yaley, County of Tuolumne, at the address shown above or email to qyaley@co.tuolumne.ca.us with “County

of Tuolumne Broadband Infrastructure Environmental Impact Report” as the subject. Public agencies providing comments are asked to include a contact person for the agency.

Comments on the NOP are due no later than the close of the 30-day review period at 4:00 p.m. on May 30, 2023.

Appendix B

Notice of Preparation Comment Letters

NATIVE AMERICAN HERITAGE COMMISSION

May 2, 2023

David Ruby
County of Tuolumne
2 S Green St.
Sonora, CA 95370

Re: 2023050017, County of Tuolumne Broadband Infrastructure Strategic Plan, Tuolumne County

Dear Mr. Ruby:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, § 15064.5 (b) (CEQA Guidelines §15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines §15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.

AB 52



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Stanley Rodriguez
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COMMISSIONER
[Vacant]

COMMISSIONER
[Vacant]

EXECUTIVE SECRETARY
Raymond C. Hitchcock
Miwok, Nisenan

NAHC HEADQUARTERS
1550 Harbor Boulevard
Suite 100
West Sacramento,
California 95691
(916) 373-3710
nahc@nahc.ca.gov
NAHC.ca.gov



AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project:

Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:

- a. A brief description of the project.
- b. The lead agency contact information.
- c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
- d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).

2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report: A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1 (b)).

- a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).

3. Mandatory Topics of Consultation If Requested by a Tribe: The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:

- a. Alternatives to the project.
- b. Recommended mitigation measures.
- c. Significant effects. (Pub. Resources Code §21080.3.2 (a)).

4. Discretionary Topics of Consultation: The following topics are discretionary topics of consultation:

- a. Type of environmental review necessary.
- b. Significance of the tribal cultural resources.
- c. Significance of the project's impacts on tribal cultural resources.
- d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).

5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process: With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).

6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document: If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:

- a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
- b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

- 7. Conclusion of Consultation:** Consultation with a tribe shall be considered concluded when either of the following occurs:
- a.** The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
 - b.** A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).
- 8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document:** Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).
- 9. Required Consideration of Feasible Mitigation:** If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).
- 10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:**
- a.** Avoidance and preservation of the resources in place, including, but not limited to:
 - i.** Planning and construction to avoid the resources and protect the cultural and natural context.
 - ii.** Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
 - b.** Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - i.** Protecting the cultural character and integrity of the resource.
 - ii.** Protecting the traditional use of the resource.
 - iii.** Protecting the confidentiality of the resource.
 - c.** Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
 - d.** Protecting the resource. (Pub. Resource Code §21084.3 (b)).
 - e.** Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
 - f.** Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).
- 11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource:** An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
- a.** The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
 - b.** The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
 - c.** The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf.

Some of SB 18's provisions include:

1. **Tribal Consultation**: If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. **No Statutory Time Limit on SB 18 Tribal Consultation**. There is no statutory time limit on SB 18 tribal consultation.
3. **Confidentiality**: Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. **Conclusion of SB 18 Tribal Consultation**: Consultation should be concluded at the point in which:
 - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
 - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>.

NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center (https://ohp.parks.ca.gov/?page_id=30331) for an archaeological records search. The records search will determine:
 - a. If part or all of the APE has been previously surveyed for cultural resources.
 - b. If any known cultural resources have already been recorded on or adjacent to the APE.
 - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
 - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
 - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:
 - a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
 - b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.
4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
 - a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, § 15064.5(f) (CEQA Guidelines § 15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
 - b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
 - c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code § 7050.5, Public Resources Code § 5097.98, and Cal. Code Regs., tit. 14, § 15064.5, subdivisions (d) and (e) (CEQA Guidelines § 15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address: Pricilla.Torres-Fuentes@nahc.ca.gov

Sincerely,

Pricilla Torres-Fuentes

Pricilla Torres-Fuentes
Cultural Resources Analyst

cc: State Clearinghouse

California Department of Transportation

OFFICE OF THE DISTRICT 10 PLANNING P.O. BOX 2048 |
STOCKTON, CA 95201 (209) 948-7325 | FAX (209)
948-7164 TTY 711 www.dot.ca.gov



Governor's Office of Planning & Research

May 23, 2023

May 25 2023

STATE CLEARING HOUSE

David Ruby
Planning Manager
Tuolumne County Community
Development Department
2 South Green Street Sonora, CA
95370

**TUO- All- Countywide Tuolumne
Broadband Infrastructure SCH
20230500017**

Dear Mr. Ruby,

The California Department of Transportation (Caltrans) appreciates the opportunity to review and comment on the Tuolumne County Broadband Project Notice of Preparation (NOP) and Initial Study (IS).

The County is proposing to expand access to broadband technology throughout the County, including the unincorporated areas and the one incorporated City of Sonora. Location and installation of fiber optic cable by a variety of potential methods (e.g., underground, and aerial installation) would be evaluated at a programmatic level in the Environmental Impact Report (EIR) for the County as a whole.

The proposed project area would be located within Tuolumne County limits. Tuolumne County encompasses approximately 2,274 total square miles, or 1,455,360 acres. The area in which future broadband infrastructure could be implemented includes all unincorporated areas of the County and the incorporated City of Sonora; it excludes federal lands, private roads, and state highway rights-of-way. The County has jurisdiction over a total of approximately 610 miles of County-maintained roads. It is envisioned that the vast majority of the future broadband infrastructure would be installed within existing County maintained road rights-of-way (ROW), public utility easements (PUE), and/or overhead public utility easements of record throughout the County.

The exact alignments of future broadband are unknown at this time and would be planned based on such considerations as construction feasibility, local preference, and locations of sensitive environmental resources.

Caltrans has the following comments:

Please ensure coordination with Caltrans' Broadband Middle Mile efforts and consider where feasible, if instead of construction, review for lease opportunities to reduce environmental impacts.

Environmental

If any construction related activities will encroach into Caltrans Right of Way (ROW), the project proponent must apply for an Encroachment Permit to the Caltrans District 10 Encroachment Permit Office. All California Environmental Quality Act (CEQA) documentation, with supporting technical studies, must be submitted with the Encroachment Permit Application. These studies will include an analysis of potential impacts to any cultural sites, historic properties, biological resources, hazardous waste locations, scenic highways, and/or other environmental resources within Caltrans Right of Way, at the project site(s).

Efforts encompass county wide activity that anticipates heavy ground disturbance that has potential to impact biological resources known to this area. The Draft IS describes that a Programmatic EIR will further analyze, in detail, the impacts to biological resources. Caltrans will need to review the Programmatic Environmental Impact Report (PEIR) to ensure all impacts anticipated to occur within Caltrans ROW is appropriately analyzed. If there are impacts to any Special Status Species (plant, fish, or wildlife) because of this project, we will need to review their correspondence with United States Fish and Wildlife (USFWS), National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Services (NMFS), and/or California Department Fish and Wildlife Services (CDFW). According to the Draft IS, there are anticipated impacts to protected "Waters". If there are any impacts to federally and state protected Waters, Caltrans will need to see all correspondence with the permitting agencies (i.e., USACE, Water Board, and/or CDFW).

Evidence of consultation with local Native American tribes and interested parties will need to be presented within the technical documents for approval of encroachment in the Caltrans ROW. Caltrans should be sent all cultural studies and given an opportunity to provide feedback regarding the identification, consultation, evaluation, and treatment of any resources in our ROW. Appropriate indigenous communities should be contacted under Assembly Bill (AB) 52 for precontact resources/culturally sensitive areas within Caltrans ROW, if guidance on this is required, contact Caltrans. All cultural resources within Caltrans ROW need to be identified and protection measures need to be fully addressed in the Draft Environmental Impact Report (DEIR) and Final Environmental Impact Report (FEIR).

Hydrology

The developer needs to ensure that the existing State drainage facilities will not be significantly impacted by the project. If historical undeveloped topography shows drainage from this site flowed into the State Right-of-Way, it may continue to do so with the conditions that peak flows may not be increased from the pre-construction quantity and the site runoff be treated to meet present storm water quality standards. If historical undeveloped topography shows drainage from this site did not flow into the State Right-of-Way, then it will not be allowed to flow into the State ROW at this time.

We request to review the pre- and post-construction runoff calculations and drainage plans to understand flow patterns. We would also like to review the floodplain study. Additional review will be done once drainage plans, floodplain study, and calculations are submitted.

Traffic Operations

Once the location is determined, the applicant will need to apply for an encroachment permit if there will be encroachment within the state right of way.

If any future project activities encroach into Caltrans ROW, the project proponent must submit an application for an Encroachment Permit to the Caltrans District 10 Encroachment Permit Office. Appropriate environmental studies must be submitted with this application. These studies will analyze potential impacts to any cultural sites, biological resources, hazardous waste locations, and/or other resources within Caltrans ROW at the project site(s). For more information, please visit the Caltrans Website at: <https://dot.ca.gov/programs/traffic-operations/ep/applications>

Please contact David Karnes at (209) 986-9830 (david.karnes@dot.ca.gov), or me at (209) 483-7234 (Gregoria.Ponce@dot.ca.gov) if you have any questions or concerns.

Sincerely,

Gregoria Ponce'

Gregoria Ponce', Chief
Office of Rural Planning

cc: State Clearinghouse (SCH)



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

MAY 31 2023

May 30, 2023

STATE CLEARINGHOUSE

Quincy Yaley, Director
County of Tuolumne, Community Development Department
2 South Green Street
Sonora, California 95370
qyaley@co.tuolumne.ca.us

Subject: County of Tuolumne Broadband Infrastructure Program Environmental Impact Report (Project)
Notice of Preparation (NOP)
SCH No.: 2023050017

Dear Quincy Yaley:

The California Department of Fish and Wildlife (CDFW) received a NOP from the Tuolumne County Community Development Department 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 & 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

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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County of Tuolumne, Community Development Department
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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.

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.

PROJECT DESCRIPTION SUMMARY

Proponent: County of Tuolumne

Objective: The Project proposes a Countywide, programmatic-level EIR/EA (PEIR/EA) for future broadband project construction in County-maintained road rights-of-way and public utility easements throughout Tuolumne County. The Countywide program would install fiber optic conduit either underground in buried conduits, overhead on pole lines, or a combination of both. In some circumstances, fiber optic conduit could be installed under roadways where space is limited alongside the roadways. Where topography or underground substrate would prohibit or impede construction of subsurface fiber optic cables, project would install aboveground fiber optic cables that would utilize existing or newly constructed utility poles.

Location: The Project site area would be located within Tuolumne County limits.

Timeframe: n/a

COMMENTS AND RECOMMENDATIONS

Special-Status Species: Given the Countywide nature of the Project, there is the potential for the Project to impact State-listed species. Records from the California Natural Diversity Database (CNDDB) show that the following special-status species, including CESA-listed species (CDFW 2023) could be impacted: the State endangered great gray owl (*Strix nebulosa*; GGO), the State endangered and federally proposed endangered foothill yellow-legged frog (*Rana boylei*; FYLF), the State threatened and federally endangered Sierra Nevada yellow-legged frog (*Rana sierrae*; SNYLF), the

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County of Tuolumne, Community Development Department
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State threatened and federally endangered Sierra Nevada red fox (*Vulpes macrotis necator*; SNRF), the State endangered and fully protected bald eagle (*Haliaeetus leucocephalus*), the State threatened tricolored blackbird (*Agelaius tricolor*; TRBL), the State candidate-listed endangered Crotch bumblebee (*Bombus crotchii*), and the following State species of special concern California spotted owl (*Strix occidentalis occidentalis*; CSO) and western pond turtle (*Actinemys marmorata*).

The primary purpose of a EIR is to consider all the potential impacts associated with the suite of projects that would eventually tier from the PEIR over time. As such, the PEIR should serve primarily as a planning level EIR and consider, in detail, the cumulative impacts of the reasonably foreseeable projects, in this case broadband installation, on the environment, on the species CDFW has identified in this comment letter. CDFW recommends that habitat assessments be conducted in and surrounding all locations for planned broadband work in the PEIR and identify all the potential plant, animal, invertebrate, and fish species that could be present. Then, for those species, CDFW recommends a robust analysis of cumulative impacts for each of those species along with avoidance, minimization, and mitigation measures that could be implemented on each project to reduce harm. For many species, subsequent protocol level surveys may be required during biological studies conducted in support of the future CEQA documents that will be tiered from this PEIR and, depending on the results, avoidance and minimization measures, permits, and mitigation may be required.

CDFW recommends that survey-level protocols be conducted for these species as part of the biological technical studies prepared in support of each future CEQA document tiered from this PEIR, with conclusions of those studies summarized therein and repeated as necessary prior to Project ground-disturbing activities. For all future projects tiered from this PEIR, CDFW recommends that focused GGO surveys be conducted by qualified biologists familiar with GGO following the protocol prepared by Beck and Winter (2000) for the United States Forest Service. For SNRF, CDFW recommends that the protocol in Appendix B of *Ecology of Red Fox (Vulpes vulpes) in the Lassen Peak Region of California, USA* (Perrine, 2005) be followed. For SNYLF and FYLF, focused surveys following the survey methods described in pages 16–22 of “A Standardized Protocol for Surveying Aquatic Amphibians” (Fellers and Freel 1995) is recommended; however, please note that dip-netting would constitute take as defined by Fish and Game Code § 86, so it is recommended this survey technique be avoided. For CSO, CDFW recommends that focused surveys be conducted by qualified biologists familiar with CSO following the protocol prepared by the United States Fish and Wildlife Service (USFWS 2011, revised 2012). In the future CEQA documents tiered from this PEIR, CDFW advises that special status species be addressed with appropriate avoidance and minimization measures and that the above survey methods be included. If take could occur as a result of Project implementation, consultation with CDFW would be warranted.

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Cumulative Impacts: CDFW recommends that a cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the Project, including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the project, even if those impacts are relatively small (i.e. less than significant). CDFW recommends cumulative impacts be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and be focused specifically on the resource, not the Project. An appropriate resource study area identified and utilized for this analysis is advised. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA and we recommend that Tuolumne County reach out to CDFW to discuss various methodologies and strategies for an analysis of this type for CDFW trustee agency resources

CNDDDB: 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 biologist 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 Stream Alteration: The Project may be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires the project proponent 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; or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial in nature. For additional information on notification requirements, please contact our staff in the LSA Program at (559) 243-4593, or R4LSA@wildlife.ca.gov.

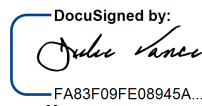
Federally Listed Species: CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, SNRF, FYLF, and SNYLF. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with

Quincy Yaley, Director
County of Tuolumne, Community Development Department
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the USFWS in order to comply with FESA is advised well in advance of any ground disturbing activities.

CDFW is available to meet with you ahead of draft PEIR preparation to discuss potential impacts and possible mitigation measures for some or all of the resources that may be analyzed in the PEIR. If you have any questions, please contact Jim Vang, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 580-3203, or by electronic mail at Jim.Vang@wildlife.ca.gov.

Sincerely,


FA83F09FE08945A...
Julie A. Vance
Regional Manager

ec: County of Tuolumne, Community Development Department
David Ruby; druby@co.tuolumne.ca.us

United States Fish and Wildlife Service
Patricia Cole; patricia_cole@fws.gov

State Clearinghouse, Governor's Office of Planning and Research
State.Clearinghouse@opr.ca.gov

CDFW LSA/1600; R4LSA@wildlife.ca.gov

Quincy Yaley, Director
County of Tuolumne, Community Development Department
May 30, 2023
Page 6

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Central Valley Regional Water Quality Control Board

30 May 2023

Quincy Yaley
Tuolumne County
Community Development Department
48 Yaney Avenue
Sonora, CA 95370
QYaley@co.tuolumne.ca.us

COMMENTS TO REQUEST FOR REVIEW FOR THE NOTICE OF PREPARATION FOR THE DRAFT ENVIRONMENTAL IMPACT REPORT, COUNTY OF TUOLUMNE BROADBAND INFRASTRUCTURE PROJECT, SCH#2023050017, TUOLUMNE COUNTY

Pursuant to the State Clearinghouse's 1 May 2023 request, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) has reviewed the *Request for Review for the Notice of Preparation for the Draft Environmental Impact Report* for the County of Tuolumne Broadband Infrastructure Project, located in Tuolumne County.

Our agency is delegated with the responsibility of protecting the quality of surface and groundwaters of the state; therefore, our comments will address concerns surrounding those issues.

I. Regulatory Setting

Basin Plan

The Central Valley Water Board is required to formulate and adopt Basin Plans for all areas within the Central Valley region under Section 13240 of the Porter-Cologne Water Quality Control Act. Each Basin Plan must contain water quality objectives to ensure the reasonable protection of beneficial uses, as well as a program of implementation for achieving water quality objectives with the Basin Plans. Federal regulations require each state to adopt water quality standards to protect the public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act. In California, the beneficial uses, water quality objectives, and the Antidegradation Policy are the State's water quality standards. Water quality standards are also contained in the National Toxics Rule, 40 CFR Section 131.36, and the California Toxics Rule, 40 CFR Section 131.38.

The Basin Plan is subject to modification as necessary, considering applicable laws, policies, technologies, water quality conditions and priorities. The original Basin Plans were adopted in 1975, and have been updated and revised periodically as required, using Basin Plan amendments. Once the Central Valley Water Board has

adopted a Basin Plan amendment in noticed public hearings, it must be approved by the State Water Resources Control Board (State Water Board), Office of Administrative Law (OAL) and in some cases, the United States Environmental Protection Agency (USEPA). Basin Plan amendments only become effective after they have been approved by the OAL and in some cases, the USEPA. Every three (3) years, a review of the Basin Plan is completed that assesses the appropriateness of existing standards and evaluates and prioritizes Basin Planning issues. For more information on the *Water Quality Control Plan for the Sacramento and San Joaquin River Basins*, please visit our website:

http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/

Antidegradation Considerations

All wastewater discharges must comply with the Antidegradation Policy (State Water Board Resolution 68-16) and the Antidegradation Implementation Policy contained in the Basin Plan. The Antidegradation Implementation Policy is available on page 74 at:

https://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr_2018_05.pdf

In part it states:

Any discharge of waste to high quality waters must apply best practicable treatment or control not only to prevent a condition of pollution or nuisance from occurring, but also to maintain the highest water quality possible consistent with the maximum benefit to the people of the State.

This information must be presented as an analysis of the impacts and potential impacts of the discharge on water quality, as measured by background concentrations and applicable water quality objectives.

The antidegradation analysis is a mandatory element in the National Pollutant Discharge Elimination System and land discharge Waste Discharge Requirements (WDRs) permitting processes. The environmental review document should evaluate potential impacts to both surface and groundwater quality.

II. Permitting Requirements

Construction Storm Water General Permit

Dischargers whose project disturb one or more acres of soil or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit), Construction General Permit Order No. 2009-0009-DWQ. Construction activity subject to this permit includes clearing, grading, grubbing, disturbances to the ground, such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. The Construction General Permit requires the development and implementation of a Storm Water Pollution Prevention Plan (SWPPP). For more information on the Construction General Permit, visit the

State Water Resources Control Board website at:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml

Clean Water Act Section 404 Permit

If the project will involve the discharge of dredged or fill material in navigable waters or wetlands, a permit pursuant to Section 404 of the Clean Water Act may be needed from the United States Army Corps of Engineers (USACE). If a Section 404 permit is required by the USACE, the Central Valley Water Board will review the permit application to ensure that discharge will not violate water quality standards. If the project requires surface water drainage realignment, the applicant is advised to contact the Department of Fish and Game for information on Streambed Alteration Permit requirements. If you have any questions regarding the Clean Water Act Section 404 permits, please contact the Regulatory Division of the Sacramento District of USACE at (916) 557-5250.

Clean Water Act Section 401 Permit – Water Quality Certification

If an USACE permit (e.g., Non-Reporting Nationwide Permit, Nationwide Permit, Letter of Permission, Individual Permit, Regional General Permit, Programmatic General Permit), or any other federal permit (e.g., Section 10 of the Rivers and Harbors Act or Section 9 from the United States Coast Guard), is required for this project due to the disturbance of waters of the United States (such as streams and wetlands), then a Water Quality Certification must be obtained from the Central Valley Water Board prior to initiation of project activities. There are no waivers for 401 Water Quality Certifications. For more information on the Water Quality Certification, visit the Central Valley Water Board website at:
https://www.waterboards.ca.gov/centralvalley/water_issues/water_quality/certification/

Waste Discharge Requirements – Discharges to Waters of the State

If USACE determines that only non-jurisdictional waters of the State (i.e., “non-federal” waters of the State) are present in the proposed project area, the proposed project may require a Waste Discharge Requirement (WDR) permit to be issued by Central Valley Water Board. Under the California Porter-Cologne Water Quality Control Act, discharges to all waters of the State, including all wetlands and other waters of the State including, but not limited to, isolated wetlands, are subject to State regulation. For more information on the Waste Discharges to Surface Water NPDES Program and WDR processes, visit the Central Valley Water Board website at:
https://www.waterboards.ca.gov/centralvalley/water_issues/waste_to_surface_water/

Projects involving excavation or fill activities impacting less than 0.2 acre or 400 linear feet of non-jurisdictional waters of the state and projects involving dredging activities impacting less than 50 cubic yards of non-jurisdictional waters of the state may be eligible for coverage under the State Water Resources Control Board Water Quality Order No. 2004-0004-DWQ (General Order 2004-0004). For more information on the General Order 2004-0004, visit the State Water Resources

Control Board website at:

https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2004/wqo/wqo2004-0004.pdf

Dewatering Permit

If the proposed project includes construction or groundwater dewatering to be discharged to land, the proponent may apply for coverage under State Water Board General Water Quality Order (Low Threat General Order) 2003-0003 or the Central Valley Water Board's Waiver of Report of Waste Discharge and Waste Discharge Requirements (Low Threat Waiver) R5-2018-0085. Small temporary construction dewatering projects are projects that discharge groundwater to land from excavation activities or dewatering of underground utility vaults. Dischargers seeking coverage under the General Order or Waiver must file a Notice of Intent with the Central Valley Water Board prior to beginning discharge.

For more information regarding the Low Threat General Order and the application process, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0003.pdf

For more information regarding the Low Threat Waiver and the application process, visit the Central Valley Water Board website at:

https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/waivers/r5-2018-0085.pdf

Limited Threat General NPDES Permit

If the proposed project includes construction dewatering and it is necessary to discharge the groundwater to waters of the United States, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. Dewatering discharges are typically considered a low or limited threat to water quality and may be covered under the General Order for *Limited Threat Discharges to Surface Water* (Limited Threat General Order). A complete Notice of Intent must be submitted to the Central Valley Water Board to obtain coverage under the Limited Threat General Order. For more information regarding the Limited Threat General Order and the application process, visit the Central Valley Water Board website at:

https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2016-0076-01.pdf

NPDES Permit

If the proposed project discharges waste that could affect the quality of surface waters of the State, other than into a community sewer system, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. A complete Report of Waste Discharge must be submitted with the Central Valley Water Board to obtain a NPDES Permit. For more information regarding the NPDES Permit and the application process, visit the Central Valley Water Board website at: <https://www.waterboards.ca.gov/centralvalley/help/permit/>

If you have questions regarding these comments, please contact me at (916) 464-4684 or Peter.Minkel2@waterboards.ca.gov.

Peter Minkel

Peter Minkel
Engineering Geologist

cc: State Clearinghouse unit, Governor's Office of Planning and Research,
Sacramento