



DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

January 8, 2024

January 8 2024

STATE CLEARINGHOUSE

Matt Fowler
Senior Environmental Planner, District 5
California Department of Transportation
50 Higuera Street
San Luis Obispo, California 93401

**Subject: Scenic Route 68 Corridor Improvements Project (Project)
Draft Environmental Impact Report/Environmental Assessment
(DEIR/EA) and 4(f) Evaluation
SCH No.: 2019090448**

Dear Matt Fowler:

The California Department of Fish and Wildlife (CDFW) received a DEIR/EA prepared by the California Department of Transportation (Caltrans), as lead agency, 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 resources. 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 Game Code, section 711.7, subdivision (a) and section 1802; California Public Resources Code, section 21070; CEQA Guidelines, section 15386, subdivision (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 (Fish and Game Code section 1802). Similarly, for purposes of CEQA,

¹ CEQA is codified in the California Public Resources Code, 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 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 (California Public Resources Code, section 21069; CEQA Guidelines, section 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 section 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 section 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

In these roles, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (i.e., 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.

Bird Protection: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include, sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

Unlisted Species: Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened (E, R, or T) on any State or Federal list to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for E, R, or T, as specified in the CEQA Guidelines, section 15380, CDFW recommends it be fully considered in the environmental analysis for the Project.

PROJECT DESCRIPTION SUMMARY

Proponent: Caltrans

Objective: Caltrans proposes to make improvements along State Route 68 within the Cities of Monterey and Del Rey Oaks and the County of Monterey which would include modifying nine intersections and improving wildlife connectivity (Project). The Project proposes to improve intersection operations to reduce vehicle delay throughout the Project corridor; reduce the rate and severity of collisions on State Route 68 within the Project site; enhance wildlife connectivity and reduce the rate of collisions between vehicles and wildlife; and improve bicycle and pedestrian access within the Project corridor. Two build alternatives are under evaluation in this DEIR/EA for potential

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environmental impacts: Alternative 1 would construct roundabouts in place of the existing signalized intersections, and Alternative 2 would include upgraded signalized intersections with enhanced lane configurations. Both build alternatives include the same wildlife crossing improvements which include replacing existing underground culverts at five locations and providing guidance-fencing along the highway to the culvert entrances. After comparison of the benefits and impacts of the alternatives, Alternative 1, intersection roundabouts, was preliminarily identified by the Transportation Agency of Monterey County (local project proponent) as the locally preferred alternative.

Location: The Project is in Monterey County on State Route 68 from just west of Josselyn Canyon Road and the Monterey County Regional Airport to just east of San Benancio Road (post mile 4.8 to post mile 13.7).

Timeframe: A Project schedule was not included.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist Caltrans in adequately identifying the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. A Recommended Mitigation Monitoring and Reporting Program is attached (Attachment 1).

CDFW is concerned regarding potential Project related impacts to the following special-status species: State threatened tricolored blackbird (*Agelaius tricolor*), State candidate endangered Crotch's bumble bee (*Bombus crotchii*), and the State species of special concern burrowing owl (*Athene cunicularia*). CDFW is also concerned about potential project impacts to bats, including the following special status species: pallid bat (*Antrozous pallidus*), Townsend's big-eared bat (*Corynorhinus townsendii*), western red bat (*Lasiurus blossevillii*), and western mastiff bat (*Eumops perotis californicus*).

I. Environmental Setting and Related Impacts

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or the United States Fish and Wildlife Service (USFWS)?

COMMENT 1: Tricolored blackbird (TRBL)

Issue: The DEIR/EA found that TRBL are known to nest in the Project vicinity but concluded that the Project will not impact tricolored blackbird due to lack of suitable nesting habitat in the Project impact area. However, Alternative 2 may result in direct or indirect impacts to a known nesting population. Nesting colonies include heavy growths of cattails, tules, thistles, willows, blackberries, mustard, nettles, salt cedar,

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giant cane, and wild rose. Flooded lands, grassy fields, and margins of ponds are typical foraging grounds (Grinnel and Miller 1944). Increasingly, TRBL are forming larger colonies that have progressively larger proportions of the species' total population (Kelsey 2008). Nesting can occur synchronously, with all eggs laid within one week (Orians 1961). For these reasons, depending on timing, disturbance to nesting colonies can cause abandonment, significantly impacting TRBL populations (Beedy et al. 2020).

Recommended Avoidance, Minimization, and/or Mitigation Measures for TRBL:

CDFW recommends that construction activities located within 300 feet of the known nesting habitat at the western end of the Laures Grade Road intersection be timed to avoid the normal bird breeding season (February 1 through September 15). However, if construction must take place during that time, CDFW recommends that a qualified wildlife biologist conduct focused surveys for nesting TRBL no more than 10 days prior to the start of ground-disturbing activities. If an active TRBL nesting colony is found during pre-activity surveys, CDFW recommends implementation of a minimum 300-foot no disturbance buffer around the colony, following CDFW's "Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015" (CDFW 2015). CDFW recommends that this buffer remain in place until the breeding season has ended or until a qualified biologist has determined that nesting has ceased, the birds have fledged, and are no longer reliant upon the colony or parental care for survival. If a TRBL nesting colony is detected during surveys, consultation with CDFW is warranted to discuss how to implement the Project and avoid take, or if avoidance is not feasible, to acquire an ITP, pursuant to Fish and Game Code section 2081 subdivision (b), prior to any ground disturbing activities.

COMMENT 2: Crotch's Bumble Bee (CBB)

Issue: CBB are known to inhabit areas of grasslands and scrub that contain requisite habitat elements for nesting, such as small mammal burrows and bunch/thatched grasses. As identified in the DEIR/EA, the Project site has suitable habitat that could support CBB nesting and foraging. CBB was once common in central and southern California. However, populations of CBB have severely declined, especially within California's Central Valley (Hatfield et al. 2014). Analyses by the Xerces Society et al. (2018) suggest there have been sharp declines in relative abundance by 98% and persistence by 80% over the last ten years.

Suitable CBB habitat includes areas of grasslands and upland scrub that have requisite habitat elements, such as small mammal burrows. CBB primarily nest in late February through late October underground in abandoned small mammal burrows but may also nest under perennial bunch grasses or thatched annual grasses, under piles of brush, in old bird nests, and in dead trees or hollow logs (Williams et al. 2014; Hatfield et al. 2015). Overwintering sites used by CBB mated

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queens include soft, disturbed soil (Goulson 2010), or under leaf litter or other debris (Williams et al. 2014). Therefore, ground disturbance and vegetation removal associated with project activities have the potential to significantly impact local CBB populations. As a state candidate species, take of CBB without appropriate incidental take authorization from CDFW would be a violation of Fish and Game Code.

Recommended Avoidance, Minimization, and/or Mitigation Measures for CBB:

CDFW recommends that a qualified biologist conduct focused surveys for CBB, and their requisite habitat features following the methodology outlined in the “Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species” (CDFW 2023a), in the appropriate survey season as part of the biological technical studies conducted in support of the DEIR/EA. CBB surveys are also recommended prior to Project activities, as already identified in in the DEIR/EA. Potential nesting sites, which include all small mammal burrows, perennial bunch grasses, thatched annual grasses, brush piles, old bird nests, dead trees, and hollow logs would need to be documented as part of the assessment. If candidate bumble bees will be captured or handled, a 2081(a) Memorandum of Understanding with CDFW would be required. If CBB is observed in the Project site, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization prior to any ground-disturbing activities may be warranted. Take authorization would occur through issuance of an Incidental Take Permit by CDFW, pursuant to Fish and Game Code section 2081, subdivision (b).

COMMENT 3: Burrowing Owl (BUOW)

Issue: The DEIR/EA did not include an assessment of potential presence of, or potential impacts on BUOW, although the biological technical study (Natural Environment Study) concluded that the project would not impact BUOW due to lack of observations during field surveys. The Project site is within the known range of BUOW and BUOW have been observed in the vicinity (CDFW 2023b, iNaturalist 2023). BUOW inhabits open grassland or adjacent canal banks, rights-of-ways, and vacant lots containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover (Gervais et al. 2008). BUOW rely on burrow habitat year-round for their survival and reproduction. Based on review of aerial imagery, BUOW has the potential to occur within or next to the Project site.

Habitat loss and degradation are considered the greatest threats to BUOW in California (Gervais et al. 2008). Potentially significant direct impacts associated with project activities include burrow collapse, inadvertent entrapment, nest abandonment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals. In addition, and as described in CDFW’s “Staff Report on Burrowing Owl Mitigation” (California Department of Fish and Game 2012), excluding and/or evicting BUOW from their burrows is considered a potentially significant impact under CEQA. Construction activities near active

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burrows could result in potentially significant impacts to nesting or overwintering owls.

Recommended Avoidance, Minimization, and/or Mitigation Measures for BUOW:

CDFW recommends that a qualified biologist assess if suitable BUOW habitat features are present within or next to the Project site (e.g., burrows) prior to construction. If suitable habitat features are present, CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys following the California Burrowing Owl Consortium's "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC 1993) and CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFG 2012). Specifically, CBOC and CDFW's Staff Report suggest three or more surveillance surveys conducted during daylight with each visit occurring at least three weeks apart during the peak breeding season (April 15 to July 15), when BUOW are most detectable. CDFW recommends no-disturbance buffers, as outlined in the "Staff Report on Burrowing Owl Mitigation", be implemented prior to and during any ground-disturbing activities. Specifically, CDFW's Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance and Recommended Buffers (meters)		
		Low	Medium	High
Nesting sites	April 1-Aug 15	200	500	500
Nesting sites	Aug 16-Oct 15	200	200	500
Nesting sites	Oct 16-Mar 31	50	100	500

COMMENT 4: Bats

Issue: The DEIR/EA provides an evaluation of potential impacts to tree- and cave-roosting bats and proposed several avoidance and minimization measures. The DEIR/EA found that there is potentially suitable habitat for pallid and western red bats in the Project site but did not include Townsend's big-eared bat or western mastiff bat. Townsend's big-eared bat was described in the Natural Environment Study as not expected to be present due to lack of suitable roosting structures in the Project impact areas. However, Townsend's big eared bat may roost in a variety of structures that are present within and directly next to the Project site, including concrete culverts, revetments, and buildings. They tend to have different day and night roost sites and may be solitary or roost in small numbers (Pierson 1999). Within the Central Coast Ranges ecosystem, western mastiff bat may occur from the Bay Area and south through Southern California. Although it tends to roost in rock

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crevices and rocky outcrops, western mastiff bat has also been found using a variety of human-made structures and trees for day roosts (Ahlborn 2000, Cockrum 1960), which are found within and next to the Project site. Without appropriate avoidance and minimization measures for bats, Project activities may result in potentially significant impacts to roosting or maternal bats, including potential inadvertent entrapment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

Recommended Avoidance, Minimization, and/or Mitigation Measures for Bats:

While the DEIR/EA (BIO-38) identifies focused surveys for bats at culverts, CDFW recommends that a qualified biologist conduct focused surveys within all potential roosting sites and habitat within 400 feet of the Project site prior to Project activities. Avoidance whenever possible is encouraged via delineation and observance of no disturbance buffers according to activity and species, as recommended in Table 7-1 of "Caltrans Bat Mitigation: A Guide to Developing Feasible and Effective Solutions" (H. T. Harvey & Associates 2021), ranging from 100 feet to 400 feet. If roosting bats are observed on the Project site and buffer areas, CDFW recommends that Caltrans stop work in the buffer area and coordinate with CDFW for site-specific impact minimization recommendations.

Would the Project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

COMMENT 5: Habitat Connectivity

Issue: CDFW supports the wildlife crossing improvements proposed for this Project to mitigate for the significant impact that the existing highway is currently imposing on local wildlife movement and the compounding effect that the Project will have on local wildlife populations by increasing the width of the roadway at the Project intersections. Including these wildlife passage improvements in the Project meets the legislature's stated intent in California Assembly Bill 2344 ("Safe Roads").

Recommended Avoidance, Minimization, and/or Mitigation Measures for Habitat Connectivity:

CDFW recommends that Caltrans coordinate with CDFW's Region 4 staff on the wildlife crossing and fencing design plans as they are being developed. CDFW also recommends that Caltrans develop and implement a long-term management program to monitor the effectiveness of the structures for at least five years after construction (e.g., Federal Highway Administration 2011; Hardy et al. 2003) and for the long-term maintenance of the integrity of the wildlife crossing structures.

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II. Editorial Comments and/or Suggestions

CDFW requests that the EIR/EA fully identify potential impacts to biological resources, including the above-mentioned species. To adequately assess any potential impacts to biological resources, focused biological surveys should be conducted by qualified wildlife biologists/botanists during the appropriate survey period(s) for each species to determine whether any special-status species and/or suitable habitat features may be present within the Project site. Properly conducted biological surveys, and the information assembled from them, are essential to identify any mitigation, minimization, and avoidance measures and/or the need for additional or protocol level surveys, and to identify any project-related impacts under CESA and other species of concern. CDFW recommends the EIR/EA address potential impacts to these species and provide measurable mitigation measures that, as needed, will reduce impacts to less than significant levels. Information on survey and monitoring protocols for sensitive species can be found at CDFW's website

(<https://www.wildlife.ca.gov/Conservation/SurveyProtocols>).

Nesting birds: CDFW encourages that project implementation occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February 1 through September 15), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction area would be

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concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist counsel and support any variance from these buffers and notify CDFW in advance of implementing a variance.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Public Resources Code, section 21003, subdivision (e)). Accordingly, please report any special-status species and natural communities detected during project surveys to CNDDDB. The CNDDDB field survey form can be found at the following link:

<https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address:

CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES


If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required for the underlying Project approval to be operative, vested, and final (California Code of Regulations, Title 14, section 753.5; Fish and Game Code, section 711.4; Public Resources Code, section 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the Project to assist Caltrans in identifying and mitigating the project's impacts on biological resources.

If you have any questions, please contact Carrie Swanberg, Senior Environmental Scientist (Supervisor), at the address provided on this letterhead, by telephone at (559) 538-4110, or by electronic mail at carrie.swanberg@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

Attachment 1: Recommended Mitigation Monitoring and Reporting Program (MMRP)

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CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)

PROJECT: Scenic Route 68 Corridor Improvements Project

CDFW provides the following measures be incorporated into the MMRP for the Project:

RECOMMENDED MITIGATION MEASURE	STATUS/ DATE/ INITIALS
<i>Design Phase</i>	
Coordinate with CDFW on wildlife crossing designs	
<i>Before Disturbing Soil or Vegetation</i>	
Tricolored Blackbird (TRBL) surveys	
Potential TRBL Section 2081 Incidental Take Permit	
Crotch Bumblebee (CBB) surveys	
Potential CBB Section 2081 Incidental Take Permit	
Burrowing Owl (BUOW) surveys	
Bat surveys	
<i>During Construction</i>	
TRBL avoidance	
CBB avoidance	
BUOW avoidance	
Bat avoidance	
<i>After Construction</i>	
Wildlife crossing long-term management program	