



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

**Jun 10 2020**

## **STATE CLEARINGHOUSE**

June 9, 2020

Juergen Vespermann  
California Department of Transportation, District 6  
855 M Street, Suite 200  
Fresno, California 93721

**Subject: Reward Capital Maintenance Project (Project)  
Initial Study with proposed Mitigated Negative Declaration  
State Clearinghouse No. 2020059031**

Dear Mr. Vespermann:

The California Department of Fish and Wildlife (CDFW) received a proposed Mitigated Negative Declaration (MND) and its supporting Initial Study (IS) prepared by the California Department of Transportation (Caltrans) for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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 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.

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<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & 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:** Caltrans

**Objective:** Caltrans proposes to resurface and install safety upgrades along a 9.4-mile segment of State Route 58 (SR 58) between its intersection with State Route 33 (SR 33) on the east, and a point just west of its intersection with Galainena Grade Road on the west. All Project-related activities will occur within the existing right-of-way either within the paved travel lanes, the unpaved but compacted and engineered shoulder backing, or within the ruderal areas beyond the travel lanes and shoulder backing. The safety upgrade work will involve the in-kind replacement of eight existing culverts, the installation of traffic monitoring hardware at two locations, upgrading and installing 16 existing road signs, and the creation of rumble-strips within the resurfaced roadway.

**Location:** The 9.4-mile segment of SR 58 which will be resurfaced and upgraded exists between post mile 6.0 and post mile 15.4 and is generally west of the community of McKittrick in western Kern County.

**Timeframe:** Unspecified.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the following comments to assist Caltrans in adequately identifying and sufficiently reducing to less-than-significant the potentially significant, direct and indirect Project-related impacts to fish and wildlife (biological) resources.

Currently, the proposed MND indicates that the Project-related impacts to Biological Resources would be less-than-significant citing the IS which both: 1) reports the negative findings of giant kangaroo rat (*Dipodomys ingens*) and blunt-nosed leopard lizard (*Gambelia sila*) surveys conducted in 2019; and 2) includes measures to avoid, minimize, and mitigate the potential Project-related impacts to San Joaquin kit fox (*Vulpes mutica macrotis*, SJKF), and San Joaquin antelope squirrel (*Ammospermophilus nelsoni*). However; as currently drafted, it is unclear what Caltrans

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considers avoidance measures for SJKF and what is considered by Caltrans as an “unavoidable impact” which would potentially warrant securing take authorization from CDFW. Specifically, CDFW is concerned that while Caltrans proposes surveys for **individual SJKF** at the Project site just prior to and during Project implementation, Caltrans does not propose surveys for SJKF **dens** at or outside the Project site, or no-disturbance buffers around those dens. CDFW herein suggests edits to the existing SJKF measures to clarify what CDFW considers avoidance, and conversely what constitutes take which would warrant acquisition of incidental take coverage pursuant to Section 2081(b) of Fish and Game Code to comply with CESA.

## **I. Environmental Setting and Related Impact**

**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: San Joaquin Kit Fox (SJKF)**

**Issue:** The Project activities will involve varying degrees of ground disturbance and the staging and laydown of equipment and materials at discreet locations along the 9.4-mile segment of SR 58. Some of the Project activities may constitute a novel disturbance sufficient to cause denning SJKF to abandon their dens causing increased susceptibility to predation and potentially resulting in abandoned pups during the pupping season. Currently, Caltrans proposes, in part, pre-activity clearance surveys for individual SJKF at the Project footprint no more than 30 days prior to commencing Project activities. Caltrans also proposes equipping all excavations deeper than two feet with escape ramps, the daily inspection of these excavations, and the inspection of pipes greater than three inches in diameter prior to burying, capping, or moving in any way. However, Caltrans does not propose surveying for SJKF dens at or near the Project site, and Caltrans does not propose no-disturbance buffers around those dens, if any are detected.

**Specific Impacts:** While CDFW agrees with Caltrans’ plans to survey/monitor for individual SJKF at or entering the Project site prior to and during Project implementation, CDFW recommends Caltrans also propose surveying for SJKF **dens** no less than 14 and no more than days in advance of vegetation- or ground-disturbance activities at and near the Project site to detect denning individuals at or sufficiently near the Project site to be impacted by the Project-related activities. Further, CDFW recommends Caltrans propose maintaining no-disturbance buffers around active SJKF dens to avoid impacts to individuals of the species.

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**Evidence impact would be significant:** While habitat loss resulting from agricultural, urban, and industrial development is the primary threat to SJKF (Cypher et al., 2013), disturbance in proximity to a den can result in unsuccessful pupping and cause individuals to become more susceptible to predation. Both results of the Project-related disturbance could constitute significant impacts to the species.

**Recommended Potentially Feasible Avoidance and Mitigation Measure(s)**

Because SJKF are known to occur in the general vicinity of the Project site and because dens could be present outside the Project footprint but sufficiently near the Project footprint to be affected by the Project-related activities, CDFW recommends the following edits to the SJKF avoidance and minimization measure section of the IS. Further, CDFW recommends these revised measures be made conditions of Project approval.

**Recommended Edits to Avoidance, Minimization, and Mitigation Measures for SJKF on page 19 of the IS.**

CDFW recommends assessing presence/absence of SJKF by conducting surveys following the USFWS “Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance” (2011). Specifically, CDFW advises conducting these surveys no less than 14 days and no more than 30 days prior to beginning of Project activities to identify SJKF dens at and within 250 feet of the Project site, and that Caltrans coordinate with USFWS and CDFW in the event that individuals and/or dens are detected during these surveys. These surveys can be limited to 100 feet beyond the Project footprint if work commences outside the pupping season. Through the aforementioned coordination, CDFW will recommend a 250-foot no-disturbance buffer around natal dens, a 100-foot no-disturbance buffer around known dens, and a 50-foot no-disturbance buffer around potential or atypical dens, and absolutely no disturbance to the dens within the above buffers without contacting CDFW and obtaining written authorization to do so. If the aforementioned buffers are not feasible or if SJKF detection occurs, no activities should commence until Caltrans engages in consultation with CDFW to discuss how to avoid take, or if avoidance is not feasible, to acquire an Incidental Take Permit prior to ground-disturbing activities, pursuant to Fish and Game Code Section 2081(b).

**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 (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link:

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<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](mailto: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>.

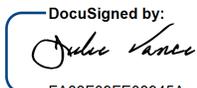
## FILING FEES

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 in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CDFW appreciates the opportunity to comment on the Project to assist Caltrans in identifying and reducing to less-than-significant the Project's potential impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). If you have any questions, please contact Jim Vang, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014, extension 254, or by electronic mail at [Jim.Vang@wildlife.ca.gov](mailto:Jim.Vang@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
FA83F09FE08945A...

Julie A. Vance  
Regional Manager

Attachment 1: Recommended Mitigation and Monitoring Reporting Program

cc: United States Fish and Wildlife Service  
2800 Cottage Way, Suite W-2605  
Sacramento, California 95825

ec: Office of Planning and Research, State Clearinghouse

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### **Literature Cited**

Cypher, B. L., S. E. Phillips, and P. A. Kelly. 2013. Quantity and distribution of suitable habitat for endangered San Joaquin kit foxes: conservation implications. *Canid Biology and Conservation* 16(7): 25–31.

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Attachment 1  
Recommended Mitigation Monitoring and Reporting Program

**Attachment 1**

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

**PROJECT: Reward Capital Maintenance Project**

**SCH No.: 2020059031**

<b>RECOMMENDED MITIGATION MEASURE</b>	<b>STATUS/DATE/INITIALS</b>
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: SJKF Avoidance	
Mitigation Measure 2: SJKF Take Authorization (if avoidance is not feasible)	
<i>During Soil or Vegetation Disturbance</i>	
Mitigation Measure 3: SJKF Avoidance (without Take Authorization)	
Mitigation Measure 4: SJKF Take Minimization (under Take Authorization)	