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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

June 16, 2020

Jun 16 2020

STATE CLEARINGHOUSE

Som Phongsavanh
California Department of Transportation, District 6
855 M Street, Suite 200
Fresno, California 93721

**Subject: Morning Drive 3R Rehabilitation Project (Project)
Initial Study with proposed Negative Declaration
State Clearinghouse No. 2020059032**

Dear Mr. Phongsavanh:

The California Department of Fish and Wildlife (CDFW) received a proposed Negative Declaration (ND) 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.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 biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

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

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CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & 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 rehabilitate an approximately three-mile segment of State Route 184 (SR 184) between Dunsmere Street on the south, to Chase Avenue on the north (Project site). All Project-related activities will occur within the existing right-of-way 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 rehabilitation work would include the replacement of curb ramps and non-standard driveways, repaving of the traffic lanes, and the widening of shoulder backing along the three-mile length of the Project right-of-way. While it is not detailed in the IS, CDFW assumes that Caltrans' plans to "widen" the shoulder backing along the right-of-way involves the **conversion** of ruderal habitat areas within the right-of-way but beyond existing shoulder backing, to engineered/compacted shoulder backing.

Location: The Project site exists between post mile 8.5 and post mile 11.6 and is generally east of the City of Bakersfield in 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. Editorial comments or other suggestions may also be included to improve the document.

Currently, the proposed ND/IS indicates that the Project-related impacts to Biological Resources would be less-than-significant with implementation of specific avoidance and minimization efforts. In particular, Caltrans concludes there will be: 1) less-than-significant impacts to the State threatened and federally endangered San Joaquin kit fox (*Vulpes mutica macrotis*, SJKF), the State and federally endangered and State fully

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protected blunt-nosed leopard lizard (*Gambelia sila*), and migratory birds in general with implementation of proposed avoidance and minimization measures, and 2) no Project-related impacts to both the State and federally endangered Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*) and the State threatened Swainson's hawk (*Buteo swainsoni*).

However, as currently drafted, it is unclear: 1) whether some of the species-specific and general migratory bird measures proposed in the IS sufficiently reduce, to less-than-significant, the potential Project-related impacts to those species, and 2) how Caltrans came to the conclusion that there will be no impacts to two State-listed and one fully protected species CDFW considers potentially present in the vicinity of the Project. Therefore, CDFW does not agree with these conclusions and will herein suggest measures to survey for and avoid Project-related impacts to these species, thereby reducing to less-than-significant the Project-related impacts. CDFW also recommends that Caltrans identify a path forward in the event avoidance of three of the four species is not feasible.

I. Environmental Setting and Related Impact

Would the Project have a substantial adverse impact, 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 three-mile segment of SR 184. 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 resulting in abandoned pups. Caltrans proposes pre-activity clearance surveys of the Project footprint between 14 and 30 days of commencing project activities, the daily inspection of deep trenches and steep-walled holes within the Project footprint, and the inspection of pipes greater than three inches in diameter prior to burying, capping, or moving in any way. However, while Caltrans proposes surveying for, and maintaining no-disturbance buffers for atypical/potential dens and known dens at and near the Project right-of-way, Caltrans does not address or recognize the vulnerability of natal dens. Further, Caltrans indicates that only USFWS will be notified/consulted in the event individual SJKF or dens are detected.

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Specific Impacts: While CDFW agrees with Caltrans' plans to conduct pre-activity surveys and daily inspections of trenches, ditches, and materials within the Project footprint, CDFW recommends Caltrans propose no-disturbance buffers around natal dens at and near the Project right-of-way. Additionally, CDFW recommends Caltrans propose notifying CDFW in the event individual SJKF or dens are detected during the surveys and/or inspections, since SJKF are also listed under CESA.

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 footprint and because natal dens are especially vulnerable to disturbance and because SJKF are a State threatened species, 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 and Minimization Measures SJKF on page 15 of the IS.

CDFW recommends the pre-activity clearance surveys for SJKF be conducted 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 footprint, and that Caltrans coordinate with USFWS **and CDFW** in the event that individuals and/or dens are detected during these surveys. Further, CDFW recommends Caltrans propose no-disturbance buffers around **natal dens** as well as atypical, potential, and known SJKF dens. The surveys can be limited to 100 feet beyond the Project footprint if work commences and will not extend into the pupping season. Through the aforementioned coordination, CDFW recommends a 250-foot no-disturbance buffer around natal dens, a 150-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 edits to the existing avoidance and minimization measures are not made, and/or not feasible, CDFW recommends Caltrans propose obtaining incidental take coverage pursuant to Section 2081(b) of Fish and Game Code in the revised IS, and that the revised IS support a Mitigated Negative Declaration. In summary, if the edited avoidance measure is not feasible, acquisition of a State Incidental

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Take Permit may be warranted to reduce to less-than-significant the unavoidable Project-related impact on SJKF.

COMMENT 2: Migratory Birds including Swainson's Hawk (SWHA)

Issue: Migratory birds, including SWHA, are known to have nested in the vicinity of the Project. The Project activities will involve varying degrees of ground disturbance within the right-of-way and CDFW considers it possible that the Project-related activities would represent a novel stimulus which could result in nest abandonment to migratory birds and to SWHA specifically if they occur within ½-mile of an active SWHA nest. This nest failure of the State threatened SWHA would represent a significant impact to SWHA and possibly take as it is defined in section 86 of Fish and Game Code.

Specific Impacts: In the IS, Caltrans addresses migratory birds in general, but does not specifically address the potential presence and/or Project-related impacts to SWHA. Further, while Caltrans proposes maintaining no-disturbance buffers around active nests, Caltrans does not assign numeric parameters for these buffers and only proposes consultation with USFWS in the event active nests occur near the Project site.

Evidence impact would be significant: SWHA exhibit high nest-site fidelity year after year and lack of suitable nesting habitat in the San Joaquin Valley limits their local distribution and abundance (CDFW 2016). Adoption of the ND as it is written will allow Project-related activities that will involve ground disturbance, grading, and excavation employing heavy equipment and work crews outside unquantified “no-work buffers” around SWHA nests. These activities occurring within ½-mile of active SWHA nests have the potential to result in nest abandonment, significantly impacting nesting SWHA.

Recommended Potentially Feasible Avoidance and Mitigation Measure(s)
Because the Project-related activities represent novel stimuli and threaten nest abandonment, CDFW recommends Caltrans propose a ½-mile no-disturbance buffer around active SWHA nests in order to reduce to less-than-significant the Project-related impacts to the species. CDFW recommends edits to the Migratory Bird avoidance and minimization measures in the IS. Further, CDFW recommends these edited measures be made quantifiable and enforceable conditions of Project approval.

Recommended Edits to Migratory Bird Avoidance and Minimization Measures to specifically address SWHA on page 16 of the IS.

Currently, under the Migratory Bird avoidance and minimization measures section of the IS, Caltrans proposes a “no-work buffer around” active migratory

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bird nests detected during preconstruction surveys. CDFW recommends Caltrans edit this measure to propose numeric no-work buffers for unlisted passerine, raptors, and listed raptors (including SWHA). Alternatively, the species-specific measures for SWHA could be focused and discussed outside the Migratory Bird section.

CDFW recommends Caltrans edit the Migratory Bird avoidance and minimization measure section of the IS to require pre-activity surveys for active nests no more than 10 days prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW then recommends Caltrans propose a minimum no-disturbance buffer of 250 feet around active nests of non-listed passerine 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 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 concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

For SWHA specifically, CDFW recommends Caltrans require focused surveys for active nests and ½-mile no-disturbance buffers around any active nests until the young have fledged and are no longer reliant upon the nest or parental care for survival. If this the ½-mile no-disturbance buffer is not feasible, CDFW recommends Caltrans propose obtaining take authorization through the acquisition of an Incidental Take Permit pursuant to Section 2081(b) of Fish and Game Code in the revised IS, and that the revised IS support a Mitigated Negative Declaration. In summary, if the edited avoidance measure is not feasible, mitigation (take authorization) would be warranted to reduce to less-than-significant the unavoidable Project-related impacts to SWHA.

COMMENT 3: Tipton Kangaroo Rat (TKR)

Issue: TKR are known to occur in the general vicinity of the Project site. While much of the land on both sides of the Project site exists as irrigated agriculture, rural residential, and even urban development, there are discreet areas adjoining the Project site which persist as ruderal grassland habitat. CDFW recommends Caltrans conduct an assessment of these ruderal habitat areas for potentially suitable TKR habitat. If suitable TKR habitat exists in areas of planned Project-related ground disturbance, equipment staging, or materials laydown, burrows in these areas would have to be completely avoided by a minimum of 50 feet in order to reduce to less

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than significant the Project-related impacts to the species, and possible take of the species.

Specific Impacts: In the IS, Caltrans does not address the possible presence or Project-related impacts to TKR. Without a determination with respect to the presence or absence of even marginal TKR habitat at or adjoining the Project site, CDFW cannot concur that the Project-related impacts to the species are less-than-significant. TKR spend much of their time underground in burrows which extend as far as 50 feet from a burrow opening and unless those burrow openings are avoided by 50 feet, Project-related ground disturbance can result in take of the species through burrow chamber collapse, entrapment, etc.

Evidence impact would be significant: Habitat loss resulting from agricultural conversion and development is the primary threat to TKR. TKR are known to occur in ruderal habitat areas which continue to have connectivity to portions of the north end and the south end of the Project right-of-way. TKR could continue to occupy ruderal habitat areas within and adjoining these portions of the Project right-of-way and Project-related ground disturbance in these areas could result in significant impacts to the species.

Recommended Potentially Feasible Avoidance and Mitigation Measure(s)
Because suitable TKR habitat may be present in the vicinity of at least portions of the Project area, CDFW recommends the following measures be added to ensure that impacts to the species will be less-than-significant and completely avoided. Further, CDFW recommends these measures be made conditions of Project approval.

Recommended TKR Avoidance and Minimization Measures for Inclusion into the IS.

In order to determine if TKR occupy ruderal habitat portions of the right-of-way or adjoining lands, CDFW recommends Caltrans revise the initial study to include plans to assess whether ruderal habitat within or adjoining (within 50 feet) the right-of-way constitute suitable habitat for TKR. If not, this should be addressed in the IS and no further measures would be needed. But if suitable habitat is present at or within 50 feet of the right-of-way, and suitable burrows cannot be avoided by a minimum no-disturbance buffer of 50 feet, CDFW recommends the IS include a measure involving protocol-level trapping surveys in advance of commencing Project activities. If no individuals are detected during these surveys, Caltrans may in fact be able to accomplish the Project avoiding significant impacts to the species. However, if TKR are found to occupy ruderal areas at or within 50 feet of the Project right-of-way, the Project would have the potential to result in significant impacts to the species unless burrow openings could be avoided by 50 feet. If this avoidance is not feasible, CDFW recommends Caltrans propose obtaining incidental take coverage pursuant to

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Section 2081(b) of Fish and Game Code in the revised IS. In summary, if the added avoidance measures for TKR are not feasible, acquisition of an Incidental Take Permit may be warranted to reduce to less-than-significant the unavoidable Project-related impacts to TKR.

COMMENT 5: Blunt-Nosed Leopard Lizard (BNLL)

Issue: BNLL are known to occur in the general vicinity of the Project site. While much of the land on both sides of the Project site exists as irrigated agriculture and rural residential and even urban development, there are discreet areas adjoining the Project site which persist as ruderal grassland habitat. Project-related ground disturbance, equipment staging, or materials laydown, burrows in these areas would have to be completely avoided by a minimum of 50 feet in order to reduce to less than significant the Project-related impacts to this species, and possible take of the species.

Specific Impacts: BNLL spend much of their time underground in burrows which extend as far as 50 feet from a burrow opening and unless those burrow openings are avoided by 50 feet, Project-related ground disturbance can result in take of the species through burrow chamber collapse, entrapment, etc. In the IS, Caltrans indicates that “preconstruction surveys within the project area” will be conducted to detect any presence of sign of BNLL and that USFWS will be consulted in the event sign or individual BNLLs are detected. Further, Caltrans proposes requiring low speed limits within the Project site to lessen the likelihood of take of the species resulting from vehicle strikes.

Evidence impact would be significant: Habitat loss resulting from agricultural conversion and development is the primary threat to BNLL. BNLL are known to have occurred in ruderal habitat areas which continue to have connectivity to portions of the Project right-of-way. BNLL could continue to occupy ruderal habitat areas within and adjoining these portions of the Project right-of-way and Project-related ground disturbance in these areas could result in significant impacts to the species.

Recommended Potentially Feasible Avoidance and Mitigation Measure(s)
Because BNLL may not be detected through “preconstruction surveys”, and because BNLL may inhabit burrows evidenced by burrow openings located outside the Project site, CDFW recommends the BNLL avoidance and minimization measure in the IS be edited to ensure that impacts to the species will be less-than-significant and completely avoided. Further, CDFW recommends these measures be made conditions of Project approval.

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Recommended Edits to Avoidance and Minimization Measures BNLL on page 12 of the IS.

In order to determine if BNLL occupy ruderal habitat portions of the right-of-way or adjoining lands, CDFW recommends Caltrans revise the IS to include plans to conduct protocol-level surveys in accordance with the "Approved Survey Methodology for the Blunt-nosed Leopard Lizard" (CDFW revised 2019) to assess the presence of the species at and near the Project site. If no individuals are detected during these surveys, Caltrans may in fact be able to accomplish the Project avoiding the species and significant impacts to the species. However, if BNLL are found to occupy ruderal habitat areas at or within 50 feet of the Project right-of-way, the Project would have the potential to result in significant impacts to the species unless burrow openings could be avoided by 50 feet. CDFW cannot issue incidental take coverage pursuant to Section 2081(b) of Fish and Game Code for Project-related take of BNLL due to its fully protected status. Therefore, take of the species must be completely avoided and we advise including measures for full species avoidance in the IS.

II. Editorial Comments and/or Suggestions

Appropriateness of ND: The above recommended revisions to the IS pertain to avoidance of SJKF and their dens, nesting SWHA, and burrows which may harbor TKR and/or BNLL at and within specified buffers from the Project right-of-way to completely avoid significant impacts to these State-listed species under this Negative Declaration. If surveys confirm the presence of any of the aforementioned species at or within the species-specific buffers, Caltrans may not be able to accomplish the Project avoiding significant impacts to these species without first obtaining incidental take authorization pursuant to Section 2081(b) of Fish and Game Code. Incidental take authorization would involve minimization of, and mitigation for, take of the permitted species. Considering this, CDFW recommends Caltrans incorporate the recommended revisions to the IS and propose a Mitigated Negative Declaration for the Project, in lieu of the currently proposed ND. This will ensure that the CDFW recommended avoidance, minimization, and mitigation measures will be quantifiable and enforceable.

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 CNDDDB. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting->

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[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>.

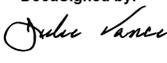
FILING FEES

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 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 avoiding the Project's 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.

Sincerely,

DocuSigned by:

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Julie A. Vance
Regional Manager

Attachment 1: Recommended Mitigation Monitoring and 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
state.clearinghouse@opr.ca.gov

Jim Vang, California Department of Fish and Wildlife

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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: Morning Drive 3R Rehabilitation Project

SCH No.: 2020059032

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: SJKF Avoidance	
Mitigation Measure 2: SJKF Take Authorization (if avoidance is not feasible)	
Mitigation Measure 3: SWHA Avoidance	
Mitigation Measure 4: SWHA Take Authorization (if avoidance is not feasible)	
Mitigation Measure 5: TKR Avoidance	
Mitigation Measure 6: TKR Take Authorization (if avoidance is not feasible)	
Mitigation Measure 7: BNLL Avoidance	
<i>During Soil or Vegetation Disturbance</i>	
Mitigation Measure 8: BNLL Avoidance	