



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
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December 20, 2023  
*Sent via email*

Nancy Sansonetti  
San Bernardino County – Department of Public Works  
825 E. Third St.  
San Bernardino, CA 92415

National Trails Highway at 10 Bridges Project (PROJECT)  
Draft Environmental Impact Report (DEIR), Environmental Assessment (EA), and Draft  
Section 4(f) Evaluation  
SCH# 2021040231

Dear Ms. Sansonetti,

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability for the DEIR from the County of San Bernardino (Lead Agency) for the 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, we appreciate 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 the Fish and Game Code.

### **CDFW ROLE**

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish and G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on project 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, § 15981.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As

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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.

Nancy Sansonetti  
 San Bernardino County – Department of Public Works  
 December 20, 2023  
 Page 2

proposed, for example, the Project may be subject to CDFW’s lake and streambed alteration regulatory authority. (Fish and 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 and G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

### **PROJECT DESCRIPTION SUMMARY**

**Proponent:** California Department of Transportation (Caltrans)

**Objective:** This Project proposes to replace ten (10) timber trestle bridges with concrete bridges on National Trails Highway, formerly known as Route 66. The 10 bridges to be replaced are located mostly between Amboy Road and Kelbaker Road near the community of Amboy in San Bernardino County. The bridges vary in length (40’ to 78’) and are approximately 28’ wide with guardrails that do not meet current AASHTO safety standards. According to Caltrans Structure Inventory and Appraisal Reports, nine of the ten bridges have a sufficiency rating less than 50 and are flagged as “Structurally Deficient”, mostly due to the low superstructure rating attributable to damaged timber stringers.

**Location:**

<b>Bridge Name</b>	<b>Location</b>
Bristol Ditch	26.7 miles east from Crucero
Cerro Ditch	1.3 miles east of Amboy
Gordo Ditch	1.8 miles east of Amboy
Cerulia Ditch	2.2 miles east of Amboy
Leith Ditch	3.1 miles east of Amboy
Terra Ditch	3.6 miles east of Amboy
Sombra Ditch	4.1 miles east of Amboy
Beacon Ditch	6.2 miles east of Amboy
Larissa Ditch	1.1 miles east of Kelbaker
Adena Ditch	21.9 miles east of Kelbaker

### **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist the County of San Bernardino in adequately identifying and/or mitigating the Project’s significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources.

Nancy Sansonetti  
San Bernardino County – Department of Public Works  
December 20, 2023  
Page 3

**COMMENT #1: Desert Tortoise (*Gopherus agassizii*)**

**EIR/EA, Biological Resources Section, Page 109-111, MM BIO-13, MM BIO-14, MM BIO-15, MM-BIO 16, MM-BIO 17, MM BIO- 18, MM BIO-19, MM BIO-21, MM BIO-22, MM BIO-29**

**Issue:** The Project may have impacts to Desert Tortoise, a California Endangered Species Act threatened species, proposed endangered.

**Specific Impact:** Desert tortoise is a State and federally listed threatened species. This species is impacted by ongoing threats, including loss, degradation, and fragmentation of habitat, due to development. Staging of construction equipment, vehicles, and foot traffic may result in the collapse of occupied burrows and result in direct mortality and/or injury to desert tortoise. Project construction and related activities may result in collision with or crushing by vehicles or heavy equipment; entrapment within open trenches and pipes; entrapment or entanglement within materials and equipment staged and moved; crushing or burial of individuals or eggs in burrows; destruction of burrows and refugia; and increased predation.

**Why Impact Would Occur:** The Project sites are located within desert tortoise habitat with confirmed sightings near National Trails Highway as recently as October 23, 2023 (INaturalist). While CDFW appreciates the inclusion of several mitigation measures (MM Bio-14, MM Bio-15, MM Bio-16, MM Bio-17, MM Bio-18, MM Bio-19, MM Bio-21, MM Bio-22), there are concerns regarding the methodology for surveys, avoidance, and adequate planning if avoidance is unachievable. CDFW also strongly encourages the Project proponent to apply for a CESA incidental take permit (ITP) for take of desert tortoise.

**Evidence impact would be significant:** Desert tortoise is a California Endangered Species Act (CESA)-listed species. Take of any CESA listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Consequently, if a project, including project construction or any project-related activity during the life of the project, results in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization prior to project implementation. This may include an incidental take permit or other take authorization from CDFW (Fish and Game Code, §§ 2080.1 & 2081).

Desert tortoise populations have declined significantly in recent decades as a result of human activities in their native habitat including land development, off-road vehicle use, overgrazing, agricultural development, military activities, predation, and the spread of invasive plant species (USFWS 2011). The desert tortoise population in the western Mojave Desert has declined by 90% since the 1980s. Desert tortoises can take up to 20

Nancy Sansonetti  
San Bernardino County – Department of Public Works  
December 20, 2023  
Page 4

years to reach sexual maturity, which limits their ability to recover from even small losses in population numbers (USFWS 2011).

**Recommended Potentially Feasible Mitigation Measure(s) to reduce impacts to less than significant:** CDFW recommends inclusion of the following changes to the mitigation measures for desert tortoise (edits are in strikethrough and additions are in bold):

**BIO-13:** An authorized project biologist, approved by CDFW and USFWS, will monitor ~~initial~~ **all** ground disturbing activities at the Project site which may cause take of desert tortoise. The authorized biologist will also oversee the implementation of all avoidance and minimization measures put in place to protect the desert tortoise.

**BIO-14:** ~~Approximately 2-4 weeks in advance of construction activities, a survey for desert tortoises and their burrows within the Project area shall occur by the authorized biologist. Additionally, within 24 hours of the start of soil disturbance, another preconstruction clearance survey for desert tortoise will be conducted by the authorized biologist. If a tortoise or tortoise sign is found in the impact areas or within the immediate vicinity during either preconstruction survey, USFWS and CDFW shall be contacted immediately and the tortoise shall be allowed to move outside the construction area/exclusionary area on their own before the Project can commence installation of exclusionary fencing, on-site construction preparation activities, or any construction activities.~~ **A CDFW-approved biologist shall conduct a protocol level presence or absence survey within the Project area and 500-foot buffer of suitable habitat, no more than 48-hours prior to Project activities and after any pause in Project activities lasting 30 days or more, in accordance with U.S. Fish and Wildlife Service 2009 desert tortoise survey methodology. The survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. Pre-construction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project activities cannot start until 2 negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. Results of the survey shall be submitted to CDFW prior to start of Project activities. If the survey confirms absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area. If the survey confirms presence, the Project proponent shall submit to CDFW for review and approval a desert tortoise-specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take of desert tortoises. If complete avoidance cannot be achieved, the Project proponent shall not undertake Project activities and Project activities shall be postponed until the appropriate authorization [i.e., California Endangered Species Act (CESA) incidental take permit under the Fish and Game Code section 2081] is obtained.**

Nancy Sansonetti  
San Bernardino County – Department of Public Works  
December 20, 2023  
Page 5

**BIO-15:** Construction impact areas shall be staked in order to contain construction activities within the Project boundaries. These areas shall be marked with temporary desert tortoise exclusion fencing marked with high visibility flagging. The desert tortoise fencing must be in compliance with the standards outlined in the 2009 *USFWS Desert Tortoise (Mojave Population) Field Manual*. The desert tortoise exclusion fencing ESAs shall be delineated in coordination with the authorized project biologist.

**BIO-16:** Desert tortoise exclusion fencing will be inspected ~~monthly~~ **twice daily (once before construction activities begin and once after construction activities have ceased for the day)** and immediately after precipitation events during project activities by the authorized project biologist and repaired as needed. Repairs must occur within two days. Any debris that accumulates along the fence should be removed as the fence is inspected.

**BIO-17:** The Project biologist shall monitor ~~initial~~ **all** ground disturbing activities for tortoise activity. Should a desert tortoise be found within Project limits, construction activities shall cease and the USFWS and CDFW shall be contacted immediately. The tortoise shall be allowed to leave the Project area limits undisturbed. Construction may only recommence at the Project biologist's authority and once the desert tortoise is outside of project limits.

**BIO-18:** Project personnel shall carefully check under parked vehicles or equipment for desert tortoises before moving said vehicles or equipment. Should a desert tortoise be found, protocol outlined in measure **BIO-17** shall be followed.

**BIO MM-19:** Construction and maintenance vehicles shall not exceed 15 mph in tortoise habitat, which includes all natural communities within the BSA, during periods of higher tortoise activity, March 1 through November 1. ~~Outside of this window, vehicles shall not exceed 25mph in tortoise habitat.~~

**BIO MM-21:** Should a desert tortoise be injured as a result of project related activities, it shall be immediately taken to a CDFW approved rehabilitation facility by the authorized biologist. The CDFW approved rehabilitation facility in the vicinity of the Project area is the Big Bear Alpine Zoo (909) 584-1299. Any veterinary bills for such injured tortoises shall be paid by San Bernardino County. The CDFW and USFWS shall be notified ~~within five calendar days of the incident~~ **immediately**. Notification shall include the date, time, location, and circumstances of the incident.

**BIO MM-22:** Should a desert tortoise be killed by project related activities or found dead within the construction area, remains shall be collected by the Project biologist and frozen as soon as possible. CDFW and USFWS shall be notified **immediately** and a written report shall be sent within five calendar days of the incident. Notification shall include the date, time, location, and circumstances of the finding.

Nancy Sansonetti  
San Bernardino County – Department of Public Works  
December 20, 2023  
Page 6

**BIO MM-29:** Placement and construction of rock slope protection will require the interstitial spaces within the rock slope protection to be filled with substrate to prevent trapping of desert tortoise.

**COMMENT #2: Nesting Birds  
EIR/EA, Biological Resources Section, Page 110-111, MM BIO-24**

**Issue:** The EIR/EA includes Mitigation Measure BIO-24, which includes nesting bird surveys in the event that vegetation removal or performing structure demolition during nesting bird season, as well as establishing a buffer around any nests that occur on the Project site. While CDFW appreciates the inclusion of this mitigation measure, there is concern that there is a lack of detail in the survey methodology to effectively reduce take of nesting birds.

**Specific Impact:** Potential take of nesting birds and loss of bird nesting and/or foraging habitat.

**Why impact would occur:** Project activities may cause adverse reactions to nesting birds. The mitigation measure provided no methodology for the pre-construction survey, which could result in the take of nesting birds if an active nest is not properly identified.

**Evidence impact would be significant:** Project proponent is responsible for complying with Fish and Game Code sections 3503, 3503.5, and 3513, which state as follows: section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs or any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto; section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by the Fish and Game Code or any regulation adopted pursuant thereto; section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.).

**Recommended potentially feasible mitigation measure(s) to reduce impacts to less than significant:** CDFW recommends a qualified biologist survey the entire Project area, not only for nesting birds, but also all bird activity to observe behavior that could be due to nest building, incubation, feeding of young and/or possible behavior that could indicate agitation and/or nest abandonment caused by Project activities. The following recommendations are made to revise Mitigation Measure BIO-24 (edits in strikethrough, additions in bold):

**MM BIO-24:**

Nancy Sansonetti  
San Bernardino County – Department of Public Works  
December 20, 2023  
Page 7

The construction contractor shall avoid removing any vegetation or performing structure demolition during the nesting bird season (February 15-August 31). If either of these activities must occur within the nesting season, a pre-construction nesting bird survey must be conducted no more than 3 days prior to the activity commencing. **Surveys shall encompass all suitable areas, including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration will take into consideration the size of the property; density and complexity of habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure that the data collected is complete and accurate. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nesting locations and nesting behavior (i.e., copulation, carrying food or nesting materials, nest building, removal of fecal sacks, flushing suddenly from atypically close range, agitation, aggressive interactions, feigning injury, or distraction displays, or other behaviors). Surveyors shall not risk failure of the nest to determine the exact location or status and will make every effort to limit the nest to potential predation as a result of the surveying/monitoring efforts (e.g., limit the number of surveyors, limit the time spent at/near the nest, scan the site for potential predators before approaching, immediately depart nest area if indicators of stress or agitation are displayed). If a nest is observed, but thought to be inactive, the Designated Biologist(s) shall monitor the nest for one hour (four hours for raptors during the non-breeding season) prior to approaching the nest to determine status. The Designated Biologist(s) shall use their best professional judgement regarding monitoring period and whether approaching the nest is appropriate. Structure demolition or vegetation removal must occur within 3 days from the nesting bird survey.**

~~A no-disturbance buffer will be established around any active nest of migratory birds and raptor species.~~ **When an active nest is confirmed, the Designated Biologist(s) shall immediately establish a conservative buffer surrounding the nest based on their best professional judgement and experience. The buffer shall be delineated to ensure that its location is known by all persons working within the vicinity but shall not be marked in such a manner that it attracts predators. Once the buffer is established, the Designated Biologist(s) shall document baseline behavior, stage of reproduction, and existing site conditions, including vertical and horizontal distances from proposed work areas, visual or acoustic barriers, and existing level of disturbance. Following documentation of baseline conditions, the Designated Biologist(s) may choose to adjust the buffer based on site characteristics, stage of reproduction, and types of Project activities proposed at/near that location. The Designated Biologist(s) shall use his/her professional expertise to determine the frequency of monitoring required (based on the nest location, bird species, and identified maintenance activities) at the onset of any changes in Project activities (e.g., increase in number or type of equipment, change in equipment usage, etc.) to determine the efficiency of the buffer.**

Nancy Sansonetti  
San Bernardino County – Department of Public Works  
December 20, 2023  
Page 8

Standard no-disturbance buffers of 100 feet for migratory birds and 300 feet for raptor species may be altered to the discretion of the Project biologist, based on species, location of the nest, and the biologist's expertise **in the event that Project activities may be causing an adverse reaction**. The contractor must immediately stop work in the nesting area until the appropriate buffer is established and is prohibited from conducting work that could disturb the birds (as determined by the Project biologist and in coordination with the County) in the buffer area until a qualified biologist determines the young have fledged. **Permittee, under the direction of the Designated Biologist(s), may also take steps to discourage nesting on the Project site, including moving equipment and materials daily, covering materials with tarps or fabric, and securing all open pipes and construction materials. The Designated Biologist(s) shall ensure that none of the materials used propose an entanglement risk to birds or other species.**

**COMMENT #3: Desert kit fox (*Vulpes macrotis*)**

**Issue:** Potential take of species of special concern, desert kit fox

**Specific issue:** The staging of construction equipment, vehicles, and foot traffic may result in the collapse of occupied burrows and result in the direct mortality and/or injury to desert kit fox. Project construction and activities may result in injury or mortality of desert kit fox.

**Why impact would occur:** The Project sites are located within desert kit fox habitat, but the EIR does not address the potential of desert kit fox to be found within any of the Project locations.

**Evidence impact would be significant:** The desert kit fox is a species of special concern and are protected from take by CDFW Code 14 CCR section 460. CEQA provides protection not only for CESA-listed species, but for any species including but not limited to SSC which can be shown to meet the criteria for State listing. Desert kit fox is an SSC that meets the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380).

**Recommended potentially feasible mitigation measure(s) to reduce impacts to less than significant:** CDFW recommends that surveys following CDFW protocols be conducted over all areas proposed to be directly or indirectly affected by the Project to determine the presence or absence of this species and the number of desert kit fox that are present.

If desert kit fox is found, or have the potential to occupy the Project site, CDFW recommends the lead agency require species-specific mitigation to offset impacts and avoidance, minimization, and monitoring measures aimed at avoiding direct impacts to



Nancy Sansonetti  
San Bernardino County – Department of Public Works  
December 20, 2023  
Page 9

desert kit fox be incorporated into the MND. Avoidance and minimization measures should include pre-activity surveys following CDFW-approved survey methods, including procedures used to classify identified dens as inactive dens, active and potentially active dens, and active natal dens, and methods utilized to quantify and locate single or paired animals that would need to be collapsed to prevent reoccupancy. The measures should also include detailed monitoring requirements and methods of exclusion/passive relocation to be conducted, and methods and timing of den excavation.

CDFW recommends the following Mitigation Measure be added to the EIR/EA:

**MM BIO-30:**

**No more than fourteen (14) days and no less than three (3) days prior to the beginning of surface disturbance, the Designated Biologist shall conduct a pre-Project 10-meter transect survey (or reduced based on topography and vegetation), to attain 100% visual coverage within the Project area and a minimum 200-meter buffer to determine the presence or absence of desert kit fox individuals, dens, and sign. Permittee shall provide the results of the survey to CDFW prior to start of Project activities.**

**If potential dens are located, they shall be monitored by the Designated Biologist. Trail cameras may be used to assist with observation but shall not be the sole basis upon which the status is determined. The Designated Biologist shall provide a determination if active dens can be avoided and buffered from Project activities to prevent take and disturbance with the survey results. Should active dens be present within the Project area that cannot be avoided with an adequate buffer, the Permittee shall reschedule Project activities or submit a monitoring and relocation plan for CDFW's review and approval. No disturbance or relocation of active dens may take place when juveniles may be present and dependent on parental care. The Designated Biologist shall block off inactive dens within the buffer zone with rocks and sticks to discourage use during Project activities and remove when construction is complete. The Designated Biologist shall periodically check the inactive burrows remain blocked and are not reoccupied.**

**COMMENT #4: Burrowing Owl (*Athene cunicularia*)**

**Issue:** Potential take of special-status species, burrowing owl.

**Specific issue:** CDFW is concerned at the lack of inclusion of burrowing owl in the EIR/EA. Portions of the Project sites are within burrowing owl habitat. Burrowing owls have a high potential to move into disturbed sites prior to and during construction activities. Burrowing owls frequently move into disturbed areas since they are adapted

Nancy Sansonetti  
San Bernardino County – Department of Public Works  
December 20, 2023  
Page 10

to highly modified habitats (Chipman et al. 2008; Coulombe 1971). Impacts to burrowing owl from the Project could include take of burrowing owls, their nests, or eggs or destroying nesting, foraging, or over-wintering habitat, thus impacting burrowing owl populations. Impacts can result from grading, earthmoving, burrow blockage, heavy equipment compaction and crushing of burrows, general Project disturbance that has the potential to harass owls at occupied burrows, and other activities.

**Why impact would occur:** According to the California Natural Diversity Database, burrowing owl occurrences have been reported in the region of National Trails Highway.

**Evidence impact would be significant:** Burrowing owl is a California Species of Special Concern. Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5 and 3513. Take is defined in Fish and Game Code section 86 as “hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill.”

Burrowing owl surveys provide information needed to determine the potential effects of proposed Project and activities on burrowing owls, and to avoid take in accordance with FGC sections 86, 3503, and 3503.5. Impact assessments evaluate the extent to which burrowing owls and their habitat may be impacted, directly or indirectly, on and within a reasonable distance of a proposed CEQA Project activity.

**Recommended potentially feasible mitigation measure(s) to reduce impacts to less than significant:** CDFW recommends the inclusion of MM BIO-31 and MM BIO-32, which includes breeding season surveys for burrowing owl to be conducted with follow up pre-construction surveys.

If burrowing owls are found to occupy the Project site and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion is not a take avoidance, minimization, or mitigation method and is considered a potentially significant impact under CEQA. However, if necessary, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of 2 artificial burrow constructed to 1 natural burrow collapsed (2:1) as minimization for the potentially significant impact of evicting burrowing owls. Burrowing owls may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance of the Project site during Project activities, at a rate that is sufficient to detect burrowing owls if they return. CDFW also recommends that when temporary or permanent burrow exclusion and/or burrow closure is implemented, burrowing owls should not be excluded from burrows unless or until a Burrowing Owl Exclusion Plan is developed and approved by CDFW; permanent loss of occupied burrow(s) and habitat is mitigated in accordance with the

Nancy Sansonetti  
San Bernardino County – Department of Public Works  
December 20, 2023  
Page 11

Staff Report; site monitoring is conducted prior to, during, and after exclusion of burrowing owls from their burrows sufficient to ensure take is avoided; and excluded burrowing owls are documented using artificial or natural burrows on an adjoining mitigation site.

If burrowing owls are found to occupy the Project site and avoidance is not possible, CDFW recommends mitigation for permanent impacts to nesting, occupied and satellite burrows and/or burrowing owl habitat such that the habitat acreage, number of burrows and burrowing owls impacted are replaced. The mitigation lands may require habitat enhancements including enhancement or expansion of burrows for breeding, shelter and dispersal opportunity, and removal or control of population stressors. CDFW recommends permanent protection of mitigation land through a conservation easement deeded to a nonprofit conservation organization or public agency with a conservation mission, development and implementation of a mitigation land management plan to address long-term ecological sustainability and maintenance of the site for burrowing owls, and funding for the maintenance and management of mitigation land through the establishment of a long-term funding mechanism such as an endowment.

CDFW offers the following measure to adequately address burrowing owl, MM BIO-31 and MM BIO-32.

#### **MM BIO-31**

**Prior to any ground disturbance, a survey for potential burrows followed by four breeding season surveys of areas found to have potential for burrowing owl occupation must be conducted in accordance with the Staff Report on Burrowing Owl Mitigation, State of California Natural Resource Agency, Department of Fish and Game, May 7, 2012. The surveys shall include 100 percent coverage of the Project site. A report summarizing the breeding season survey including all requirement for survey reports (page 30 of the 2012 Staff Report) shall be submitted to CDFW for review and approval.**

**If no burrowing owl, active burrowing owl burrows, or sign thereof are found, no further action is necessary. If burrowing owl, active burrowing owl burrows, or sign thereof are found the qualified biologist shall prepare and implement a plan for avoidance, minimization, and mitigation measures to be review and approved by CDFW prior to commencing Project activities. The plan shall propose mitigation for permanent loss of occupied burrow(s) and habitat. The mitigation lands may require habitat enhancements including enhancement or expansion of burrows for breeding, shelter and dispersal opportunity, and removal or control of population stressors. Permanent protection of mitigation land through a conservation easement deeded to a nonprofit conservation organization or public agency with a conservation mission, development and implementation of a**

Nancy Sansonetti  
San Bernardino County – Department of Public Works  
December 20, 2023  
Page 12

**mitigation land management plan to address long-term ecological sustainability and maintenance of the site for burrowing owls, and funding for the maintenance and management of mitigation land through the establishment of a long-term funding mechanism such as an endowment.**

**MM BIO-32:**

**To ensure that the Project avoids impacts to burrowing owl, a qualified biologist shall complete a take avoidance survey no less than 14 days prior to initiating ground disturbance activities using the recommended methods described in the 2012 Staff Report. Burrowing owls may re-colonize a site after only a few days. Time lapses between Project activities trigger subsequent take avoidance surveys including but not limited to a final survey conducted within 24 hours prior to ground disturbance.**

**COMMENT #5: Desert Bighorn Sheep (*Ovis canadensis*)**

**Issue:** Potential take of desert bighorn sheep

**Specific issue:** According to the California Natural Diversity Database, desert bighorn sheep have been identified in the quadrants in which the Project takes place, as well as surrounding quadrants.

**Why impact would occur:** The EIR/EA has not identified any avoidance measures for desert bighorn sheep.

**Evidence impact would be significant:** Desert Bighorn Sheep is a fully protected species as defined by state law. (Fish & G. Code, §§ 4700). CDFW would like to advise the project proponent that take of a fully protected species is prohibited and CDFW cannot authorize take for development. The Project must be designed to fully avoid impacts to fully protected species.

**Recommended potentially feasible mitigation measure(s) to reduce impacts to less than significant:** CDFW recommends the inclusion of MM BIO-33 for the avoidance of desert bighorn sheep.

**MM BIO-33:**

**Bighorn Sheep Management Plan. To avoid significant impacts to desert bighorn sheep, an adaptive management plan (Desert Bighorn Sheep Management Plan) shall be provided to CDFW for review and approval. The Desert Bighorn Sheep Management Plan shall include measures designed to address loss of suitable**

Nancy Sansonetti  
San Bernardino County – Department of Public Works  
December 20, 2023  
Page 13

**habitat, forage availability, and connectivity within the home range, and to avoid death or injury of bighorn sheep.**

### **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, § 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 filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

### **ENVIRONMENTAL DOCUMENT FILING FEE**


The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is 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 environmental document filing 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.)

### **CONCLUSIONS**

CDFW appreciates the opportunity to comment on the National Trails Highway at 10 Bridges Project and help the County of San Bernardino in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Marlee Poff, Environmental Scientist at email [marlee.poff@wildlife.ca.gov](mailto:marlee.poff@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
Alisa Ellsworth

Environmental Program Manager

Nancy Sansonetti  
 San Bernardino County – Department of Public Works  
 December 20, 2023  
 Page 14

## References

U.S. Fish and Wildlife Service [USFWS]. 2011. Revised recovery plan for the Mojave population of the desert tortoise (*Gopherus agassizii*). U.S. Fish and Wildlife Service, Pacific Southwest Region, Sacramento, CA, USA

## Attachments:

Mitigation and Monitoring Reporting Program (MMRP) for CDFW-Proposed Mitigation Measures

## **ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)**

### **PURPOSE OF THE MMRP**

The purpose of the MMRP is to ensure compliance with mitigation measures during project implementation. Mitigation measures must be implemented within the time periods indicated in the table below.

### **TABLE OF MITIGATION MEASURES**

The following items are identified for each mitigation measure: Mitigation Measure, Implementation Schedule, and Responsible Party. The Mitigation Measure column summarizes the mitigation requirement. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing mitigation measures.

<b>Biological (BIO) Mitigation Measure</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>
BIO-13: An authorized project biologist, approved by CDFW and USFWS, will monitor all ground disturbing activities at the Project site which may cause take of desert tortoise. The authorized biologist will also oversee the implementation of all	Prior to commencing ground- or vegetation-disturbing activities	Project Proponent

Nancy Sansonetti  
 San Bernardino County – Department of Public Works  
 December 20, 2023  
 Page 15

<p>avoidance and minimization measures put in place to protect the desert tortoise.</p>		
<p>BIO-14: A CDFW-approved biologist shall conduct a protocol level presence or absence survey within the Project area and 500-foot buffer of suitable habitat, no more than 48-hours prior to Project activities and after any pause in Project activities lasting 30 days or more, in accordance with U.S. Fish and Wildlife Service 2009 desert tortoise survey methodology. The survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. Pre-construction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project activities cannot start until 2 negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. Results of the survey shall be submitted to CDFW prior to start of Project activities. If the survey confirms absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area. If the survey confirms presence, the Project proponent shall submit to CDFW for review and approval a desert tortoise-specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take of desert tortoises. If complete avoidance cannot be achieved, the Project proponent shall not undertake Project activities and Project activities shall be postponed until the appropriate authorization [i.e., California Endangered Species Act (CESA) incidental take permit under the Fish and Game Code section 2081] is obtained.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

Nancy Sansonetti  
 San Bernardino County – Department of Public Works  
 December 20, 2023  
 Page 16

<p>BIO-15: Construction impact areas shall be staked in order to contain construction activities within the Project boundaries. These areas shall be marked with temporary desert tortoise exclusion fencing marked with high visibility flagging. The desert tortoise fencing must be in compliance with the standards outlined in the 2009 <i>USFWS Desert Tortoise (Mojave Population) Field Manual</i>. The desert tortoise exclusion fencing ESAs shall be delineated in coordination with the authorized project biologist.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>
<p>BIO-16: Desert tortoise exclusion fencing will be inspected twice daily (once before construction activities begin and once after construction activities have ceased for the day) and immediately after precipitation events during project activities by the authorized project biologist and repaired as needed. Repairs must occur within two days. Any debris that accumulates along the fence should be removed as the fence is inspected.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>
<p>BIO-17: The Project biologist shall monitor all ground disturbing activities for tortoise activity. Should a desert tortoise be found within Project limits, construction activities shall cease and the USFWS and CDFW shall be contacted immediately. The tortoise shall be allowed to leave the Project area limits undisturbed. Construction may only recommence at the Project biologist's authority and once the desert tortoise is outside of project limits.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>
<p>BIO-18: Project personnel shall carefully check under parked vehicles or equipment for desert tortoises before</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>



Nancy Sansonetti  
 San Bernardino County – Department of Public Works  
 December 20, 2023  
 Page 17

<p>moving said vehicles or equipment. Should a desert tortoise be found, protocol outlined in measure BIO-17 shall be followed.</p>		
<p>BIO MM-19: Construction and maintenance vehicles shall not exceed 15 mph in tortoise habitat, which includes all natural communities within the BSA, during periods of higher tortoise activity, March 1 through November 1.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>
<p>BIO MM-21: Should a desert tortoise be injured as a result of project related activities, it shall be immediately taken to a CDFW approved rehabilitation facility by the authorized biologist. The CDFW approved rehabilitation facility in the vicinity of the Project area is the Big Bear Alpine Zoo (909) 584-1299. Any veterinary bills for such injured tortoises shall be paid by San Bernardino County. The CDFW and USFWS shall be notified immediately. Notification shall include the date, time, location, and circumstances of the incident.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>
<p>BIO MM-22: Should a desert tortoise be killed by project related activities or found dead within the construction area, remains shall be collected by the Project biologist and frozen as soon as possible. CDFW and USFWS shall be notified immediately and a written report shall be sent within five calendar days of the incident. Notification shall include the date, time, location, and circumstances of the finding.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>
<p>BIO MM-29: Placement and construction of rock slope protection will require the interstitial spaces within the rock slope protection to be filled with substrate to prevent trapping of desert tortoise.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

Nancy Sansonetti  
 San Bernardino County – Department of Public Works  
 December 20, 2023  
 Page 18

<p>BIO-24: The construction contractor shall avoid removing any vegetation or performing structure demolition during the nesting bird season (February 15-August 31). If either of these activities must occur within the nesting season, a pre-construction nesting bird survey must be conducted no more than 3 days prior to the activity commencing. Surveys shall encompass all suitable areas, including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration will take into consideration the size of the property; density and complexity of habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure that the data collected is complete and accurate. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nesting locations and nesting behavior (i.e., copulation, carrying food or nesting materials, nest building, removal of fecal sacks, flushing suddenly from atypically close range, agitation, aggressive interactions, feigning injury, or distraction displays, or other behaviors). Surveyors shall not risk failure of the nest to determine the exact location or status and will make every effort to limit the nest to potential predation as a result of the surveying/monitoring efforts (e.g., limit the number of surveyors, limit the time spent at/near the nest, scan the site for potential predators before approaching, immediately depart nest area if indicators of stress or agitation are displayed). If a nest is observed, but thought to be inactive, the Designated Biologist(s) shall monitor the nest for one hour (four hours for raptors during the non-breeding season) prior to approaching the nest to determine status. The Designated</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>
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Nancy Sansonetti  
San Bernardino County – Department of Public Works  
December 20, 2023  
Page 19

<p>Biologist(s) shall use their best professional judgement regarding monitoring period and whether approaching the nest is appropriate. Structure demolition or vegetation removal must occur within 3 days from the nesting bird survey.</p> <p>When an active nest is confirmed, the Designated Biologist(s) shall immediately establish a conservative buffer surrounding the nest based on their best professional judgement and experience. The buffer shall be delineated to ensure that its location is known by all persons working within the vicinity but shall not be marked in such a manner that it attracts predators. Once the buffer is established, the Designated Biologist(s) shall document baseline behavior, stage of reproduction, and existing site conditions, including vertical and horizontal distances from proposed work areas, visual or acoustic barriers, and existing level of disturbance. Following documentation of baseline conditions, the Designated Biologist(s) may choose to adjust the buffer based on site characteristics, stage of reproduction, and types of Project activities proposed at/near that location. The Designated Biologist(s) shall use his/her professional expertise to determine the frequency of monitoring required (based on the nest location, bird species, and identified maintenance activities) at the onset of any changes in Project activities (e.g., increase in number or type of equipment, change in equipment usage, etc.) to determine the efficiency of the buffer. Standard no-disturbance buffers of 100 feet for migratory birds and 300 feet for raptor species may be altered to the discretion</p>		
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Nancy Sansonetti  
 San Bernardino County – Department of Public Works  
 December 20, 2023  
 Page 20

<p>of the Project biologist, based on species, location of the nest, and the biologist’s expertise in the event that Project activities may be causing an adverse reaction. The contractor must immediately stop work in the nesting area until the appropriate buffer is established and is prohibited from conducting work that could disturb the birds (as determined by the Project biologist and in coordination with the County) in the buffer area until a qualified biologist determines the young have fledged. Permittee, under the direction of the Designated Biologist(s), may also take steps to discourage nesting on the Project site, including moving equipment and materials daily, covering materials with tarps or fabric, and securing all open pipes and construction materials. The Designated Biologist(s) shall ensure that none of the materials used propose an entanglement risk to birds or other species.</p>		
<p>BIO-30: No more than fourteen (14) days and no less than three (3) days prior to the beginning of surface disturbance, the Designated Biologist shall conduct a pre-Project 10-meter transect survey (or reduced based on topography and vegetation), to attain 100% visual coverage within the Project area and a minimum 200-meter buffer to determine the presence or absence of desert kit fox individuals, dens, and sign. Permittee shall provide the results of the survey to CDFW prior to start of Project activities.</p> <p>If potential dens are located, they shall be monitored by the Designated Biologist. Trail cameras may be used to assist with observation but shall not be the sole</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

Nancy Sansonetti  
 San Bernardino County – Department of Public Works  
 December 20, 2023  
 Page 21

<p>basis upon which the status is determined. Permittee shall provide a determination if active dens can be avoided and buffered from Project activities to prevent take and disturbance with the survey results.</p> <p>Should active dens be present within the Project area that cannot be avoided with an adequate buffer, the Permittee shall reschedule Project activities or submit a monitoring and relocation plan for CDFW's review and approval. No disturbance or relocation of active dens may take place when juveniles may be present and dependent on parental care. Permittee shall block off inactive dens within the buffer zone with rocks and sticks to discourage use during Project activities and remove when construction is complete. The Designated Biologist shall periodically check the inactive burrows remain blocked and are not reoccupied.</p>		
<p>BIO-31: Prior to any ground disturbance, a survey for potential burrows followed by four breeding season surveys of areas found to have potential for burrowing owl occupation must be conducted in accordance with the Staff Report on Burrowing Owl Mitigation, State of California Natural Resource Agency, Department of Fish and Game, May 7, 2012. The surveys shall include 100 percent coverage of the Project site. A report summarizing the breeding season survey including all requirement for survey reports (page 30 of the 2012 Staff Report) shall be submitted to CDFW for review and approval.</p> <p>If no burrowing owl, active burrowing owl burrows, or sign thereof are found, no</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

Nancy Sansonetti  
 San Bernardino County – Department of Public Works  
 December 20, 2023  
 Page 22

<p>further action is necessary. If burrowing owl, active burrowing owl burrows, or sign thereof are found the qualified biologist shall prepare and implement a plan for avoidance, minimization, and mitigation measures to be review and approved by CDFW prior to commencing Project activities. The plan shall propose mitigation for permanent loss of occupied burrow(s) and habitat. The mitigation lands may require habitat enhancements including enhancement or expansion of burrows for breeding, shelter and dispersal opportunity, and removal or control of population stressors. Permanent protection of mitigation land through a conservation easement deeded to a nonprofit conservation organization or public agency with a conservation mission, development and implementation of a mitigation land management plan to address long-term ecological sustainability and maintenance of the site for burrowing owls, and funding for the maintenance and management of mitigation land through the establishment of a long-term funding mechanism such as an endowment.</p>		
<p>BIO-32: To ensure that the Project avoids impacts to burrowing owl, a qualified biologist shall complete a take avoidance survey no less than 14 days prior to initiating ground disturbance activities using the recommended methods described in the 2012 Staff Report. Burrowing owls may re-colonize a site after only a few days. Time lapses between Project activities trigger subsequent take avoidance surveys including but not limited to a final survey conducted within 24 hours prior to ground disturbance.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

Nancy Sansonetti  
San Bernardino County – Department of Public Works  
December 20, 2023  
Page 23

<p>BIO-33: Bighorn Sheep Management Plan. To avoid significant impacts to desert bighorn sheep, an adaptive management plan (Desert Bighorn Sheep Management Plan) shall be provided to CDFW for review and approval. The Desert Bighorn Sheep Management Plan shall include measures designed to address loss of suitable habitat, forage availability, and connectivity within the home range, and to avoid death or injury of bighorn sheep.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>
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