



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

**May 14 2021**

## STATE CLEARINGHOUSE

May 14, 2021

Juergen Vespermann  
California Department of Transportation  
2015 East Shields Avenue, Suite 100  
Fresno, California 93726

**Subject: State Route 99 Tulare City Widening Project (Project)**  
**Notice of Preparation (NOP)**  
**SCH No.: 2021040498**

Dear Mr. Vespermann:

The California Department of Fish and Wildlife (CDFW) received a NOP indicating Caltrans is in the process of drafting an Environmental Impact Report 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 resources. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under Fish and Game Code.

### CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & 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 (LSA) 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.

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

In this role, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (e.g., CEQA), focusing specifically on Project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

**Water Pollution:** Pursuant to Fish and Game Code section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that without appropriate mitigation measures, implementation of the Project could result in pollution of Waters of the State from storm water runoff or construction-related erosion. Potential impacts to the wildlife resources that utilize these watercourses include the following: increased sediment input from road or structure runoff; toxic runoff associated with development activities and implementation; and/or impairment of wildlife movement along riparian corridors. The Regional Water Quality Control Board and United States Army Corps of Engineers also have jurisdiction regarding discharge and pollution to Waters of the State.

In this role, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (i.e., CEQA), focusing specifically on Project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Caltrans

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**Objective:** The proposed Project would involve widening and rehabilitating approximately 5.2 miles of State Route (SR) 99 within the City of Tulare, Tulare County. The Project will involve constructing one additional lane within the existing median in each direction, tree and shrub removal, and the addition of four new drainage basins. Existing lanes and shoulders of SR 99 will be rehabilitated, and the existing Paige Avenue interchange will be reconstructed, including the construction of two new roundabouts and a new overcrossing structure. In the Notice of Preparation, Caltrans does not commit to implementing the Project outside the bird nesting season. Additionally, in the Notice of Preparation, Caltrans indicated that no impacts to species are anticipated and it is unclear whether they will be addressed in the Environmental Impact Report the agency is developing.

**Location:** The Project involves a 5.2-mile long segment of State Route 99 within the City of Tulare, Tulare County.

**Timeframe:** Unspecified.

## COMMENTS AND RECOMMENDATIONS

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

CDFW is concerned that the Project could result in significant impacts to the; State threatened Swainson's hawk (*Buteo swainsoni*); the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*); and the State species of special concern burrowing owl (*Athene cunicularia*). Further, CDFW is concerned that the Project could significantly adversely affect the Tulare Canal, which may be subject to CDFW's LSA regulatory authority.

### 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: Swainson's Hawk (SWHA)

**Issue:** SWHA are known to nest in the vicinity of the Project area which contains and adjoins both nesting and foraging habitat for the species.

**Specific impact:** Without appropriate avoidance and minimization measures, potential significant impacts associated with the Project's roadway, culvert, and tree/shrub

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removal work could result in nest abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

**Evidence impact would be significant:** Without appropriate survey methods, SWHA nesting at and in the vicinity of the Project area can remain undetected resulting in avoidance and minimization measures not being effectively implemented. In addition, novel stimuli near nest sites can result in nest failure. The primary threat to SWHA in California is loss of foraging and nesting habitat resulting from urban development and incompatible agriculture (CDFW 2016). Depending on the timing of construction, Project activities including noise, vibration, odors, tree removal, and the use/staging of heavy equipment could affect nests and have the potential to result in nest abandonment.

### **Recommended Potentially Feasible Mitigation Measure(s)**

To evaluate potential Project-related impacts to nesting SWHA, CDFW recommends the CEQA document include plans to conduct the following evaluation of the Project area, and the following mitigation measures as conditions of approval.

#### **Recommended Mitigation Measure 1: Focused Surveys for Nesting SWHA**

If the Project commences during or will extend into the SWHA nesting season (February 1 through September 15), CDFW recommends that a qualified biologist conduct surveys for nesting SWHA following the survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) prior to commencing work. CDFW recommends these surveys for active nests be conducted no more than 10 days prior to the start of Project activities.

#### **Recommended Mitigation Measure 2: Active SWHA Nest Avoidance**

If an active SWHA nest is found, CDFW recommends implementation of a minimum ½-mile no-disturbance buffer 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.

#### **Recommended Mitigation Measure 3: SWHA Take Authorization**

If nesting SWHA are detected and the ½-mile no-disturbance nest buffer is not feasible, consultation with CDFW is warranted to determine if the Project can avoid take. If SWHA take cannot be avoided, acquisition of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) prior to commencing Project activities would be warranted to comply with CESA.

### **COMMENT 2: San Joaquin Kit Fox (SJKF)**

**Issue:** SJKF can potentially occur in the vicinity of the Project area. The Project activities may have the potential to temporarily or permanently impact suitable habitat and denning areas for SJKF.

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SJKF den in a variety of areas such as right-of-ways (ROWs), agricultural and fallow/ruderal habitat, dry stream channels, and canal levees, and SJKF populations can fluctuate over time. SJKF are also capable of occupying urban environments. SJKF may be attracted to Project areas due to the type and level of ground-disturbing activities and the loose, friable soils resulting from intensive ground disturbance. SJKF will forage in fallow and agricultural fields and utilize streams and canals as dispersal corridors. As a result, there is potential for SJKF to occur at and near the Project area.

**Specific impact:** Without appropriate avoidance and minimization measures for SJKF, potential significant impacts associated with Project-related activities could result in habitat loss, den collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of young, and direct mortality of individuals.

**Evidence impact is potentially significant:** While habitat loss resulting from land conversion to agricultural, urban, and industrial development is the primary threat to SJKF (Cypher et al. 2013), impacts to the species can occur as a result of construction projects conducted near denning individuals, and individuals being attracted to ground disturbance. Portions of the Project area occur in and adjacent to suitable habitat for the species, and therefore the Project-related activities have the potential to significantly impact individuals of the species.

#### **Recommended Potentially Feasible Mitigation Measure(s)**

To evaluate potential impacts to SJKF associated with the Project, CDFW recommends conducting the following evaluation of the Project area, and making the mitigation measures conditions of Project approval.

#### **Recommended Mitigation Measure 4: SJKF Habitat Assessment**

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of Project implementation, to determine if the Project area or its immediate vicinity contains suitable habitat for SJKF.

#### **Recommended Mitigation Measure 5: SJKF Surveys**

CDFW recommends assessing presence/absence of SJKF by having qualified biologists conduct surveys of Project areas and a 500-foot buffer of Project areas to detect SJKF and their sign.

#### **Recommended Mitigation Measure 6: SJKF Avoidance**

If surveys reveal the presence of SJKF dens at or within the 500-foot buffer of the Project area, CDFW recommends following the USFWS "Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance" and the avoidance buffers recommended therein.

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### **Recommended Mitigation Measure 7: SJKF Take Authorization**

SJKF detection warrants consultation with CDFW to discuss how to avoid take or, if avoidance is not feasible, to acquire an ITP prior to ground-disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

### **COMMENT 3: Burrowing Owl (BUOW)**

**Issue:** BUOW may occur near the Project site. BUOW inhabit open grassland or adjacent canal banks, ROWs, vacant lots, etc. containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover.

**Specific impact:** Potentially significant direct impacts associated with the Project activities include burrow collapse, inadvertent entrapment, nest abandonment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

**Evidence impact is potentially significant:** BUOW rely on burrow habitat year-round for their survival and reproduction. Habitat loss and degradation are considered the greatest threats to BUOW in California's Central Valley (Gervais et al. 2008). The Project area is bordered by potentially suitable habitat for the species and ground-disturbing activities associated with the Project have the potential to significantly impact local BUOW populations.

### **Recommended Potentially Feasible Mitigation Measure(s) (Regarding Environmental Setting and Related Impact)**

To evaluate potential impacts to BUOW, CDFW recommends conducting the following evaluation of the Project area and avoidance measures that could be made conditions of approval for the Project.

### **Recommended Mitigation Measure 8: BUOW Surveys**

CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys following the California Burrowing Owl Consortium's "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC 1993) and CDFW's Staff Report on Burrowing Owl Mitigation" (CDFG 2012). Specifically, CBOC and CDFW's Staff Report suggest three or more surveillance surveys conducted during daylight with each visit occurring at least three weeks apart during the peak breeding season (April 15 to July 15), when BUOW are most detectable.

### **Recommended Mitigation Measure 9: BUOW Avoidance**

CDFW recommends no-disturbance buffers, as outlined in the "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), be implemented prior to and during any ground-disturbing activities. Specifically, CDFW's Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a

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qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

\*meters (m)

### Recommended Mitigation Measure 10: BUOW Passive Relocation and Mitigation

If BUOW are found within these recommended buffers 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 1 burrow collapsed to 1 artificial burrow constructed (1:1) as mitigation for the potentially significant impact of evicting BUOW. BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance, at a rate that is sufficient to detect BUOW if they return.

## II. Editorial Comments and/or Suggestions

**Lake and Streambed Alteration:** The Project is subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent, as well as those that are perennial in nature.

State Route 99 along the Project area crosses over the Tulare Canal, and the Project has the potential to include activities that may be subject to CDFW's LSA regulatory authority in this, and possibly other areas. Project activities in the vicinity of streams have the potential to impact downstream waters. Streams function in the collection of water from rainfall, storage of various amounts of water and sediment, discharge of water as runoff and the transport of sediment, and they provide diverse sites and pathways in which chemical reactions take place and provide habitat for fish and wildlife species. Disruption of stream systems such as this along the Project area can have significant physical, biological, and

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chemical impacts that can extend into the adjacent properties, thereby adversely affecting the flora and fauna in the adjacent habitat. CDFW recommends the EIR require Notification prior to commencing the Project-related activities in this, and other streams which may occur along the Project area.

**Federally Listed Species:** CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to SJKF. Take under the federal Endangered Species Act (ESA) is more broadly defined than CESA; take under ESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting/denning. Consultation with the USFWS in order to comply with ESA is advised well in advance of any ground-disturbing activities.

**Nesting birds:** CDFW encourages Project implementation occur outside the bird nesting season. However, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February through mid-September), the Project's applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Code sections referenced above.

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

If continuous monitoring of identified nests by a qualified biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250-feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or 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.



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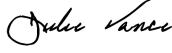
## ENVIRONMENTAL DATA

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

CDFW appreciates the opportunity to comment on the Project to assist Caltrans in identifying and mitigating 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 Javier Mendez, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 903-5026, or by email at [javier.mendez@wildlife.ca.gov](mailto:javier.mendez@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
FA83F09FE08945A...  
Julie A. Vance  
Regional Manager

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

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## REFERENCES

- CBOC 1993. California Burrowing Owl Consortium. 1993. Burrowing owl survey protocol and mitigation guidelines. April 1993.
- CDFG 2012. CDFG. 2012. Staff Report on Burrowing Owl Mitigation. California Department of Fish and Game.
- CDFW 2016. CDFW, 2016. Status Review: Swainson's hawk (*Buteo swainsoni*) in California. Reported to California Fish and Game Commission. Five years status report.
- Cypher et al. 2013. Cypher, B. L., S. E. Phillips, 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.
- Gervais et al. 2008. Gervais, J.A., D.D. Rosenberg, and L.A. Comrack. Burrowing Owl (*Athene cunicularia*) in Shuford, W.D. and T. Gardali, editors. 2008. California Bird Species of Special
- SWHA TAC 2000. SWHA TAC, 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in the Central Valley of California. Swainson's Hawk Technical Advisory Committee. May 31, 2000.

**Attachment 1**

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

**PROJECT: State Route 99 Tulare City Widening Project**

**SCH No.: 2021040498**

<b>RECOMMENDED MITIGATION MEASURE</b>	<b>STATUS/ DATE/ INITIALS</b>
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: SWHA Surveys	
Mitigation Measure 3: SWHA Take Authorization if Avoidance not feasible	
Mitigation Measure 4: SJKF Habitat Assessment	
Mitigation Measure 5: SJKF Surveys	
Mitigation Measure 7: SJKF Take Authorization if Avoidance not feasible	
Mitigation Measure 8: BUOW Surveys	
Mitigation Measure 10: BUOW Passive Relocation and Mitigation if Avoidance not feasible	
<i>During Construction</i>	
Mitigation Measure 2: SWHA Avoidance	
Mitigation Measure 6: SJKF Avoidance	
Mitigation Measure 9: BUOW Avoidance	