



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

June 08 2021

STATE CLEARINGHOUSE

June 8, 2021

Becky Napier
Kern Council of Governments
1401 19th Street, Suite 300
Bakersfield California, 93301

**Subject: 2022 Regional Transportation Plan/Sustainable Communities Strategy
(RTP/SCS) (Project)
Notice of Preparation (NOP)
SCH No.: 2021050012**

Dear Ms. Napier:

The California Department of Fish and Wildlife (CDFW) received a NOP from the Kern Council of Governments (Kern COG) 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

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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projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (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: Kern COG

Objective: The 2022 RTP/SCS is a regional planning document that provides policy guidance to local jurisdictions within Kern County. Specifically, it necessitates preparation of a Program EIR, which is a "first-tier" CEQA document designed to consider "broad policy alternatives and program wide mitigation measures" (State CEQA Guidelines Sec. 15168). The programmatic environmental analysis for the Program EIR will evaluate environmental effects, such as direct and indirect effects, growth-inducing impacts, and cumulative impacts, and will include mitigation measures to offset any identified potentially significant adverse environmental effects. In addition, the Program EIR will supply the foundation for subsequent, site-specific environmental reviews that will be conducted by implementation agencies, as projects in the RTP/SCS are developed (State CEQA Guidelines Sec. 15385).

Location: Kern COG is an association of city and county governments created to address regional transportation issues. Its member agencies include the County of Kern and the 11 incorporated cities within Kern County including Arvin, Bakersfield, California City, Delano, Maricopa, McFarland, Ridgecrest, Shafter, Taft, Tehachapi, and Wasco.

COMMENTS AND RECOMMENDATIONS

The NOP indicates that the Environmental Impact Report (EIR) for the Project will describe existing environmental conditions in the Project area, and analyze potential impacts resulting from Project activities. The EIR will also identify and evaluate alternatives to the proposed project.

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When an EIR is prepared, the specifics of mitigation measures may be deferred, provided the lead agency commits to mitigation and establishes performance standards for implementation. Several special-status plant and animal species that have been documented in Project area per the California Natural Diversity Database (CNDDDB), including but not limited to, the State and federally endangered; Bakersfield cactus (*Opuntia basilaris* var. *treleasei*), California jewelflower (*Caulanthus californicus*), Tipton kangaroo rat (*Dipodomys nitratooides nitratooides*), blunt-nosed leopard lizard (*Gambelia sila*), giant kangaroo rat (*Dipodomys ingens*), California condor (*Gymnogyps californianus*), southwestern willow flycatcher (*Empidonax traillii extimus*), least Bell's vireo (*Vireo bellii pusillus*), and southern mountain yellow-legged frog (*Rana muscosa*), the State endangered; San Joaquin adobe sunburst (*Pseudobahia peirsonii*), Bakersfield smallscale (*Atriplex tularensis*), western yellow-billed cuckoo (*Coccyzus americanus occidentalis*), bald eagle (*Haliaeetus leucocephalus*), foothill yellow-legged frog (*Rana boylei*), Mojave tarplant (*Deinandra mohavensis*), the State threatened; striped adobe-lily (*Fritillaria striata*), Fisher (*Pekania pennanti*), Kern Canyon slender salamander (*Batrachoseps simatus*), California tiger salamander (*Ambystoma californiense*), tricolored blackbird (*Agelaius tricolor*), Swainson's hawk (*Buteo swainsoni*), giant gartersnake (*Thamnophis gigas*), San Joaquin kit fox (*Vulpes macrotis mutica*), desert tortoise (*Gopherus agassizii*), southern rubber boa (*Charina umbratica*), Nelson's antelope squirrel (*Ammospermophilus nelsoni*), and Mohave ground squirrel (*Xerospermophilus mohavensis*), and the State species of special concern; Le Conte's thrasher (*Toxostoma lecontei*), Tehachapi pocket mouse (*Perognathus alticola inexpectatus*), gray vireo (*Vireo vicinior*), western pond turtle (*Emys marmorata*), arroyo toad (*Anaxyrus californicus*), Townsend's big-eared bat (*Corynorhinus townsendii*), two-striped gartersnake (*Thamnophis hammondi*), short-nosed kangaroo rat (*Dipodomys nitratooides brevinasus*), Buena Vista Lake ornate shrew (*Sorex ornatus relictus*), coast horned lizard (*Phrynosoma blainvillii*), American badger (*Taxidea taxus*), long-eared owl (*Asio otus*), yellow-breasted chat (*Icteria virens*), yellow warbler (*Setophaga petechia*), San Joaquin pocket mouse (*Perognathus inornatus*), pallid bat (*Antrozous pallidus*), western mastiff bat (*Eumops perotis californicus*), short-nosed kangaroo rat (*Dipodomys nitratooides brevinasus*), fulvous whistling-duck (*Dendrocygna bicolor*), San Joaquin coachwhip (*Masticophis flagellum ruddocki*), spotted bat (*Euderma maculatum*), purple martin (*Progne subis*), relictual slender salamander (*Batrachoseps relictus*), California glossy snake (*Arizona elegans occidentalis*), Sierra night lizard (*Xantusia vigilis sierrae*), Southern Sierra legless lizard (*Anniella campi*), Bakersfield legless lizard (*Anniella grinnelli*), western spadefoot (*Spea hammondi*), and burrowing owl (*Athene cunicularia*). While this list may not include all special-status species present Project area, it does provide a robust source of information as to which species could potentially be impacted. CDFW recommends the EIR prepared for the Project analyze potential impacts to these species provide measurable mitigation measures that, as needed, will reduce impacts to less than significant levels. 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>).

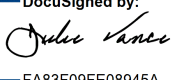
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CDFW also recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, Bakersfield cactus, San Joaquin adobe sunburst, San Joaquin woollythreads, California jewelflower, Tipton kangaroo rat, Kern mallow, Kern primrose sphinx moth, blunt-nosed leopard lizard, giant kangaroo rat, western snowy plover, arroyo toad, valley elderberry longhorn beetle, California red-legged frog, Buena Vista Lake ornate shrew, western yellow-billed cuckoo, California condor, giant gartersnake, San Joaquin kit fox, southwestern willow flycatcher, California tiger salamander, fisher, desert tortoise, least Bell's vireo, southern mountain yellow-legged frog, and vernal pool invertebrates. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA 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. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground disturbing activities.

In addition to potential species impacts, it is likely that some Project activities that will be subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. If a Lake or Streambed Alteration Agreement (LSAA) is needed, CDFW is required to comply with CEQA in the issuance or the renewal of a LSAA. Therefore, for efficiency in environmental compliance, we recommend that any potential lake or stream disturbance that may result from Project activities be described, and mitigation for the disturbance be developed as part of the EIR. This will reduce the need for the Department to require extensive additional environmental review for a LSAA in the future. If inadequate, or no environmental review, has occurred, for the Project activities that are subject to notification under Fish and Game Code section 1602, CDFW will not be able to issue the Final LSAA until CEQA analysis for the project is complete. This may lead to considerable Project delays.

CDFW is available to meet with you ahead of DEIR preparation to discuss potential impacts and possible mitigation measures for some or all of the resources that may be analyzed in the EIR. If you have any questions, please contact Jaime Marquez, Environmental Scientist, at the address provided on this letterhead or by electronic mail at Jaime.Marquez@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

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LITERATURE CITED

CDFW. 2021. Biogeographic Information and Observation System (BIOS).
<https://www.wildlife.ca.gov/Data/BIOS>.