



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 Central Region
 1234 East Shaw Avenue
 Fresno, California 93710
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

October 1, 2021

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STATE CLEARINGHOUSE

Trais Norris, Central Region Environmental
 California Department of Transportation, District 6
 2015 East Shields Avenue, Suite 100
 Fresno, California 93726

**Subject: State Route 33 Culvert Rehabilitation Project (Project)
 Initial Study/proposed Mitigated Negative Declaration
 SCH No.: 2021090066**

Dear Mr. Norris:

The California Department of Fish and Wildlife (CDFW) received a proposed Mitigated Negative Declaration (MND) and its supporting Initial Study (IS) from the California Department of Transportation (Caltrans) for the Project pursuant 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, 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 & 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.

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.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: Caltrans

Objective: The objective of the Project is to replace, repair, and/or rehabilitate 40 existing culverts which convey streams and accumulated stormwater across the State Route (SR) 33 right-of-way.

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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Location: The Project will occur within the SR 33 right-of-way between post mile 21.8 and post mile 39.8 north and south of the community of McKittrick in western Kern County.

Timeframe: Project is expected to start in 2024 and be complete by the end of 2025.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Caltrans in adequately identifying and/or mitigating 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.

CDFW offers the following comments to assist Caltrans in adequately identifying and 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 MND indicates that the Project-related impacts to Biological Resources would be less-than-significant with implementation of specific avoidance and minimization efforts. However, as currently drafted, it is unclear whether the species-specific measures proposed in the IS actually reduces to less-than-significant the potential Project-related impacts to blunt-nosed leopard lizard (*Gambelia sila*). Caltrans concludes there will be less-than-significant impacts to the State endangered (and fully protected) and federally endangered blunt-nosed leopard lizard with implementation of proposed avoidance and minimization measures and that there will be no impacts to the rare and endemic Crotch bumble bee (*Bombus crotchii*) a Species of Greatest Conservation Need (SGCN) in California (CDFW 2015). CDFW does not agree with these conclusions, and suggests additional surveys and consultation with CDFW.

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: Blunt-Nosed Leopard Lizard (BNLL)

Issue: The Project activities will involve varying degrees of ground disturbance and the staging and laydown of equipment and materials along an 18-mile long segment of the SR 33 right-of-way. In support of the Initial Study, Caltrans completed "full-protocol surveys" for BNLL in September 2020, and no individuals were detected. In the Initial Study, Caltrans proposes to conduct "preconstruction surveys" for BNLL at and within a 200-foot buffer of the Project Site and consult with the United States Fish and Wildlife Service if individuals are detected. Additionally, Caltrans proposes to have a biological monitor at the Project Site during initial ground-disturbing activities, and prohibit vehicle speeds in excess of 20 miles per hour within the Project Site.

CDFW is unclear as to what Caltrans means by "full-protocol surveys" which were conducted within the month of September. Please note that the CDFW "Approved Survey Methodology for the Blunt-nosed Leopard Lizard" (CDFW, 2019) (e.g. what is commonly referred to as "Protocol Level Surveys") requires at least 12 days of surveys conducted during the adult optimal survey period (April 15 to July 15) and at least additional 5 days of surveys during the hatchling optimum period (August 15-30 and September 15-30), for a total of 17 survey days. As such, Caltrans did not conduct full protocol level surveys for BNLL and as such would not have necessarily

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detected the species during these surveys even if present. CDFW is equally unclear with regard to Caltrans' plans to conduct "preconstruction surveys" for the species in advance of commencing ground-disturbing activities, as the species is difficult to detect during certain times of year and weather conditions even when present.

Specific Impacts: CDFW agrees with Caltrans' plan to conduct surveys for BNLL prior commencing Project activities, have a biological monitor present during initial ground disturbing activities, and limit vehicle speeds through the Project Site while the Project is being implemented. However, CDFW recommends that Caltrans be clear in the IS/MND that approval of the Project will be conditioned on negative BNLL survey results, as demonstrated by full protocol level surveys (as defined by CDFW) conducted no more than one year prior to commencing ground disturbance. These surveys would involve both spring adult and fall juvenile survey periods unless Caltrans considers, and CDFW agrees, that the Project is only maintenance in nature. Further, CDFW recommends Caltrans commit, in the MND, to providing any positive survey results to CDFW prior to commencing Project Activities and consulting with CDFW on methods to avoid take in the event individual BNLL are detected during these surveys or through other means.

Evidence impact would be significant: Habitat loss resulting from agricultural, urban, and industrial development is the primary threat to BNLL. Very little suitable habitat for this species remains along the western floor of the San Joaquin Valley. The range for BNLL now consists of scattered parcels of undeveloped land within the valley floor and the foothills of the Coast Range (USFWS 1998). BNLL are known to occur in the vicinity of the Project Site (CDFW 2021) and the Project-related ground disturbance in these areas could result in significant impacts on the species if they are present at the Project Site or within burrows evidenced by openings within 50 feet of the Project Site. Due to the species' State fully protected conservation status, CDFW is unable to authorize take coverage under an incidental take permit for BNLL.

Recommended Potentially Feasible Avoidance, Minimization, and Mitigation Measure: Because BNLL are known to occur in the vicinity of the Project Site and because suitable burrows could be present within and sufficiently close to the Project Site to be affected by Project activities, CDFW recommends the following edits to the BNLL avoidance, minimization, and mitigation measure section of the IS. Further, CDFW recommends these revised measures be made conditions of Project approval.

Recommended Edits to *Avoidance, Minimization, and/or Mitigation Measures* for BNLL on pages 33 and 34 of the IS.

CDFW recommends conducting surveys in accordance with the "Approved Survey Methodology for the Blunt-nosed Leopard Lizard" (CDFW 2019, hereafter, CDFW Protocol Level Surveys) prior to initiating any vegetation- or ground-disturbance activities. This survey protocol, designed to optimize BNLL detectability, reasonably assures CDFW that ground disturbance will not result in take of this fully protected species.

CDFW advises completion of CDFW Protocol Level Surveys at and within 200 feet of the Project Site no more than one year prior to initiation of ground disturbance. Please note that CDFW Protocol Level must be conducted on multiple dates during late spring, summer, and fall and that within these time periods there are specific protocol-level date, temperature, and time parameters which must be adhered to. As a result, protocol-level surveys for BNLL are not synonymous with 30-day "preconstruction surveys" often conducted for other wildlife species. In addition, the CDFW Protocol Level Survey protocol specifies different survey effort requirements based on whether the disturbance results from maintenance activities or if the disturbance results in habitat removal (CDFW 2019).

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In the event individual BNLL are detected at or within 200 feet of the Project Site during these CDFW Protocol Level Surveys, CDFW advises Caltrans consult with CDFW on feasible strategies for avoiding unauthorized Project-related take.

COMMENT 2: Crotch Bumble Bee (CBB)

Issue: The Project activities will involve varying degrees of ground disturbance within the right-of-way. CBB suitable habitat occurs within the Project vicinity. Suitable CBB habitat includes areas of grasslands and upland scrub that contain requisite habitat elements, such as small mammal burrows. CBB primarily nest in late February through late October underground in abandoned small mammal burrows but may also nest under perennial bunch grasses or thatched annual grasses, under brush piles, in old bird nests, and in dead trees or hollow logs (Williams et al. 2014; Hatfield et al. 2015). Overwintering sites utilized by CBB mated queens include soft, disturbed soil (Goulson 2010), or under leaf litter or other debris (Williams et al. 2014). Therefore, potential ground disturbance and vegetation removal associated with Project implementation may significantly impact local CBB populations.

CDFW recommends Caltrans conduct an assessment of habitat at the Project Site for potentially suitable CBB habitat. If suitable CBB habitat exists in areas of planned Project-related ground disturbance, equipment staging, or materials laydown, potential CBB nesting sites in these areas would have to be avoided in order to reduce to less-than-significant the Project-related impacts to the species.

Specific Impacts: Without a determination with respect to the presence or absence of CBB habitat at the Project Site, CDFW cannot concur that the Project-related impacts to the species are less-than-significant. CBB nest in underground burrows and in thatched area and unless these potential nest sites are avoided, Project-related ground disturbance could result in impacts to the species. In the IS, Caltrans does not address the potential for the presence of CBB at or near the Project Site.

Evidence impact would be significant: CBB was once common throughout most of the central and southern California; however, it now appears to be absent from most of it, especially in the central portion of its historic range within California's Central Valley (Hatfield et al. 2014). Analyses by the Xerces Society et al. (2018) suggest there have been sharp declines in relative abundance by 98% and persistence by 80% over the last ten years. CBB could continue to occupy the habitat areas within the Project Site and Project-related ground disturbance in these areas could result in significant impacts to the species.

Recommended Potentially Feasible Avoidance, Minimization, and Mitigation Measure: Because suitable CBB habitat may be present in the vicinity of the Project Site, CDFW recommends the following measure be added to ensure that impacts to the species will be less-than-significant. Further, CDFW recommends these measures be made conditions of Project approval.

Recommended addition of Avoidance, Minimization, and/or Minimization Measures for CBB in the IS.

In order to determine if CBB occupy habitat areas of the Project Site, CDFW recommends Caltrans revise the IS to include plans to assess whether habitat areas of the Project Site constitute suitable habitat for CBB. If not, this should be addressed in the IS and no further measures would be needed. But if suitable habitat is present at or near the right-of-way, and suitable burrows or areas of thatch cannot be avoided, CDFW recommends the IS include a measure requiring surveys for CBB in advance of commencing Project activities. If no individuals or nests 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 CBB are found to occupy habitat areas at or near the right-

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of-way, the Project would have the potential to result in significant impacts to the species unless the potential nesting sites can be avoided. If this avoidance is not feasible, CDFW recommends Caltrans propose consultation with CDFW in the revised IS.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be 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 FEES

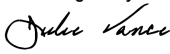
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental 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.)

CONCLUSION

CDFW appreciates the opportunity to comment on the Initial Study and proposed Mitigated Negative Declaration to assist Caltrans in identifying and minimizing to less-than-significant the Project-related impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Steven Hulbert, Senior Environmental Scientist (Specialist), at (559) 575-6415 or at steven.hulbert@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Julie A. Vance
Regional Manager

Attachment 1

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

ec: Office of Planning and Research, State Clearinghouse, Sacramento

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Attachment 1**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)****PROJECT: State Route 33 Culvert Rehabilitation Project****SCH No.: 2021090066**

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: BNLL Avoidance (surveys and establish buffers)	
Mitigation Measure 2: CBB Surveys and Avoidance	
<i>During Soil or Vegetation Disturbance</i>	
Mitigation Measure 3: BNLL Avoidance (observe buffers and monitor)	
Mitigation Measure 4: CBB Avoidance (observe buffers and monitor)	