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Nov 19 2021

November 19, 2021

STATE CLEARINGHOUSE

Ms. Carmen Lo
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Subject: State Route 1 Class II Bike Lane Facility Improvements Project (PROJECT); Draft Mitigated Negative Declaration (MND); SCH #2021100313

Dear Ms. Lo:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Mitigated Negative Declaration (MND) from the California Department of Transportation (Caltrans) for the State Route 1 Class II Bike Lane Facility Improvements Project ("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, 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

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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Endangered Species Act (CESA) (Fish & Game 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 reduce bicyclist fatalities and serious injuries on the California State Highway System. To accomplish this, Caltrans proposes to add Class II bike lanes in both directions at various locations on State Route 1 (SR-1). Additional Project elements include, but are not limited to, the widening of right-turn pockets; widening of existing shoulders; removing existing sand deposits along the roadway; upgrading the guardrail at Bolsa Chica Ecological Reserve (BCER); relocating traffic signals and lighting poles; and upgrading an existing traffic signal pole that was previously part of a separate Project under a Categorical Exemption for Existing Facilities. In order to accommodate the bike lanes, Caltrans proposes permanent easements and temporary construction easements in BCER and Huntington Beach Wetlands.

Timeframe: Caltrans anticipates the Final Environmental Document will be approved in March 2022. Caltrans expects construction will occur between January 2025 and April 2026, over a period of 16 months.

Location: The Project area includes SR-1 between the bridge crossing at the mouth of the Santa Ana River and Anderson Street (south to north, respectively), in the City of Huntington Beach, in the County of Orange. The traffic signal pole upgrade location is the northwest corner of SR-1 and Seal Beach Boulevard in the City of Seal Beach. The total length of the Project is approximately 10 miles.

Biological Setting: A Natural Environment Study (NES) was conducted by LSA Associates, Inc. in October 2021 to analyze biological resources within the Project area.

The Biological Study Area (BSA) includes the Caltrans right-of-way, proposed easements within the Project footprint, and buffers between 50 and 200 feet at the intersections with proposed permanent easements and temporary construction easements.

LSA Associates conducted field investigations in May, June, and August 2021. The investigations included identifying existing vegetation communities, suitable habitats for special-status species, potential jurisdictional waters, special status plant surveys, and special status wildlife surveys.

The Project footprint is mostly adjacent to, but also overlaps a portion of, Huntington Beach Wetlands and the Bolsa Chica Ecological Reserve, which is owned by State Lands Commission and managed by CDFW. The Project footprint is also adjacent to Bolsa Chica State Beach and Huntington State Beach. To accommodate the widening proposed in the Project, Caltrans intends to obtain the easements identified in Table 1.11-1 below, excerpted from the MND.

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Table 2.11-1 ROW Acquisitions within the Project Limits

Locations	Assessor Parcel Number (APN)	ROW Requirements	Area Required (sf)
Southeast (SE) Corner/ Warner Avenue	110-017-01	Temporary Construction Easement (TCE)	820
SE Corner/Warner Avenue	110-017-02	TCE	430
Southwest (SW) Corner/ Warner Avenue	110-017-03	Permanent Easement (PE)	50
		TCE	80
Magnolia Street	114-160-77	PE	5
		TCE	20
Brookhurst Street	114-160-72	PE	5
		TCE	20

Source: Draft Project Report (DPR; September 2021), Caltrans.

The Project area hosts the following vegetation communities: arroyo willow thicket (0.03 acre), coastal sage scrub (2.38 acres), disturbed coastal sage scrub (0.25 acre), coastal sage scrub/saltbush scrub ecotone (0.17 acre), coastal strands (6.35 acres), disturbed coastal strands (0.48 acre), coastal strands/coastal sage scrub ecotone (0.93 acre), goldenbush scrub (1.20 acres), disturbed goldenbush scrub (0.07 acre), saltbush scrub (0.36 acre), disturbed saltbush scrub (0.08 acre), southern coastal salt marsh (5.35 acres), disturbed southern coastal salt marsh (0.34 acre), open water (5.17 acres), ruderal/disturbed (2.63 acre), and salt grass flats (0.05 acre).

Caltrans anticipates impacts to the following vegetation community: coastal sage scrub (<0.01 acre, temporary), coastal strands (1.65 acres, permanent), disturbed coastal strands (0.04 acre, permanent; <0.01 acre, temporary), disturbed saltbush scrub (<0.01 acre, permanent), and goldenbush scrub (0.06 acre, permanent; 0.03 acre, temporary).

Direct impacts to sensitive species include:

- 100 individual coast woolly-heads (*Nemacaulis denudata* var. *denudata*; California Rare Plant Rank 1B.2) out of more than 7,200 individuals observed;
- 0.04 acre of permanent and 0.03 acre of temporary impacts to western snowy plover (*Charadrius nivosus*; Endangered Species Act (ESA)-listed threatened) critical habitat in a goldenbush scrub California Coastal Act Environmentally Sensitive Habitat Area (ESHA);
- less than 0.01 acre of permanent impacts to Belding's savannah sparrow (*Passerculus sandwichensis beldingi*; CESA-listed endangered) marginal foraging habitat in disturbed saltbush scrub;
- less than 0.01 acre of temporary impacts to coastal California gnatcatcher (*Poliophtila californica californica*; California Species of Special Concern (SSC) and federal-threatened species) marginal suitable habitat in a coastal sage scrub ESHA; and,

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- 1.69 acres of permanent and less than 0.01 acre of temporary impacts to California horned lark (*Eremophila alpestris actia*; California Special Animal) and California legless lizard (*Aniella pulchra*; SSC) marginal suitable habitat in a coastal strands ESHA.

Additional sensitive species that may be impacted by the activities within or near conserved lands include: estuary seablite (*Suaeda esteroa*; California Native Plant Society (CNPS) Rank 1B.2), wandering skipper (*Panoquina errans*; California Special Animal), California least tern (*Sternula antillarum browni*; CESA- and ESA-listed endangered; California Fully Protected Species), western snowy plover (*Charadrius nivosus nivosus*; SSC and ESA-listed threatened), white-tailed kite (*Elanus leucurus*; California Fully Protected Species), osprey (*Pandion haliaetus*, California Watch List), light-footed Ridgway's rail (*Rallus longirostris levipes*; CESA- and ESA-listed endangered and California Fully Protected Species), and California brown pelican (*Pelecanus occidentalis californicus*, California Fully Protected Species).

Caltrans proposes to mitigate for these impacts at a minimum 2:1 ratio and is currently in negotiations with the California Coastal Commission (CCC) and the U.S. Fish and Wildlife Service (USFWS) to provide funds toward restoration in BCER and/or parcels owned by the Huntington Beach Wetlands Conservancy.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Caltrans in adequately identifying, avoiding, 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 are also included.

I. Insufficient Disclosure and Analysis

On November 18, 2021, CDFW became aware that, in contrast to the MND, Project impacts may not include permanent impacts within BCER though temporary impacts to BCER are still planned (B. Lu, personal communication). Comments provided below are based upon the analysis in the MND; however, even given reduced impacts to BCER, CDFW strongly recommends additional environmental analysis of the Project. We also request that coordination regarding any impacts to CDFW-managed lands be pursued at the earliest possible time.

Foremost, the MND does not provide sufficient disclosure or analysis of the Project's potential biological impacts to allow CDFW to determine their significance, nor to ascertain whether proposed mitigation will reduce impacts to biological resources to below significant.

The Project is located in relation to, and has potential to impact, sensitive habitats, including BCER, Huntington Beach Wetlands, Talbert Marsh Inlet, Bolsa Chica Inlet, the mouth of the Santa Ana River, and Bolsa and Huntington State Beaches. Permanent impacts are proposed within BCER, which is a CDFW-managed Ecological Reserve. As the state's Trustee Agency for fish and wildlife resources, CDFW considers permanent impacts to conserved lands significant even with appropriate mitigation. Furthermore, the MND does not adequately demonstrate that impacts to CESA-listed and/or fully protected species will be less than significant with mitigation. BCER is home to California least tern, Belding's savannah sparrow, light-footed Ridgway's rail, and white-tailed kite. Appendix G of the CEQA Guidelines notes that an impact would be significant if it would have an effect on

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sensitive species. In addition to being both CESA- and ESA-listed endangered, California least terns, light-footed Ridgway's rails, brown pelican, and white-tailed kite are also fully protected under Fish and Game Code section 3511(b)(6). A fully protected species may not be incidentally taken at any time (except pursuant to an applicable Natural Community Conservation Plan) and any impacts to them would be considered significant under CEQA.

Given the permanent impacts proposed in BCER and impacts to CESA-listed and/or fully protected species, the Project will result in significant impacts even with mitigation, and an MND is not the appropriate environmental document for the Project (CEQA Guidelines § 15064). CDFW strongly recommends a complete draft Environmental Impact Report (EIR) be circulated for public review and comment. The additional information and analyses identified in this letter should be included in the draft EIR.

Alternatives Analysis

One of the purposes of an EIR is to identify alternatives to a proposed Project and evaluate the comparative merits of feasible alternatives (CEQA Guidelines § 15126.6(d)). Since the Project proposes permanent and temporary easements in BCER and Huntington Beach Wetlands, CDFW requests that a draft EIR include alternatives that do not involve easements on conserved lands.

Permanent Easements in BCER

MND Chapter 2, page 2-38 indicates that Caltrans will need to acquire at least one right-of-way through and/or easement over portions of the BCER. However, Caltrans does not specify the mechanism for acquiring such rights-of-way and/or easements through a state-owned and managed ecological reserve. CDFW is unaware of any authority that would allow Caltrans to exercise eminent domain over property owned and managed by other state agencies, particularly land managed for the protection of CESA-listed species. Similarly, Caltrans has not proposed transferring jurisdiction, pursuant to Government Code section 14683 over any of the property in the BCER for right-of-way or easement purposes. At a minimum, Caltrans should identify the appropriate legal mechanism through which it seeks to acquire such rights-of-way and/or easements.

In its May 25, 2021, Section 4(f) Resource Coordination letter to the State Lands Commission, Caltrans indicated that it cannot require "the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance, or land of an historic site of national, state, or local significance" unless both of the following are true:

1. There is no prudent and feasible alternative to using that land; and
2. The program or project includes all possible planning to minimize the harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.

The May 25, 2021, letter asserts, without supporting documentation or explanation, that the Project "will not diminish the function of the Bolsa Chica Ecological Reserve and its associated facilities" and that "permanent and temporary impacts to the Bolsa Chica Ecological Reserve will be considered *de minimis*." CDFW disagrees with these conclusory statements and finds them premature given that Caltrans has not yet completed consultation

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with either State Lands Commission, as the owner of the BCER, or with CDFW, as the manager of the BCER and the Trustee Agency for the state's fish and wildlife resources.

CDFW recommends Caltrans coordinate any proposed easements within BCER with CDFW Region 5's Wildlife and Lands group and Habitat Conservation Planning Branch prior to finalizing an Environmental Document.

Coordination with CDFW Regarding Temporary Impacts in BCER

For the same reasons discussed above with regard to the permanent impacts to BCER, CDFW strongly recommends that Caltrans engage with CDFW Lands Program and Habitat Conservation Planning Branch and request approval for any proposed temporary easements in BCER prior to circulating the draft EIR.

II. Typographical Error in Avoidance/Minimization Measure BIO-2

In MND Chapter 2, page 2-19, BIO-2 states in part, "[i]f listed species are observed within the work area...the work cannot be postponed until appropriate measures are implemented and the species is no longer present." This appears to be a typographical error because the same measure in MND Appendix E states that if listed species are observed *and* the work cannot be postponed, then Caltrans will consult with CDFW and USFWS. This second measure appears to be the correct measure. CDFW recommends the language be corrected in Chapter 2.

III. Clarification Regarding Fish Passage Barriers in the BSA

The MND, on page 2-16, states no existing anadromous fish barriers are present within the BSA. However, the BSA includes the SR-1 bridge crossing the mouth of the Santa Ana River. The California Fish Passage Assessment Database indicates potential passage constraints exist and a detailed survey is warranted. The draft Environmental Document should be revised to include the current status of fish passage at this bridge.

IV. Specific Comments

Comment #1: Mitigation Ratios MND Chapter 2, Page 2-15

Issue #1: Caltrans proposes insufficient mitigation for 1,330 square feet of temporary construction easements and 50 square feet of permanent easement around the intersection of SR-1 and Warner Avenue within BCER.

Specific Impact: The MND states that Caltrans will offset impacts to ESHAs by contributing funds for restoration projects and is considering restoration project locations in BCER and/or within parcels managed/owned by the Huntington Beach Wetlands Conservancy at a minimum 2:1 ratio. The MND indicates that Caltrans is coordinating with the CCC and USFWS to determine mitigation ratios and sites. However, the MND does not specify whether the proposed permanent easements in BCER are included in the mitigation considerations and does not appear to provide on-site restoration for the proposed temporary construction easements impacts. Additionally, CDFW maintains that a 2:1 ratio for impacts in an existing Ecological Reserve is insufficient to offset impacts. Finally, the MND does not address coordinating mitigation ratios and/or sites with CDFW, including potential mitigation on CDFW lands.

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Why Impact Would Occur: BCER is an ecologically sensitive resource and host to rare, sensitive habitats and sensitive listed and non-listed species including, but not limited to, southern coastal salt marsh, arroyo willow thicket, coastal sage scrub, goldenbush scrub, southern foredunes, southern tarplant (*Centromadia parryi australis*; CNPS 1B.1), salt marsh bird's beak (*Chloropyron maritimum maritimum*; CESA- and ESA-listed endangered), Coulter's goldfields (*Lasthenia glabrata coulteri*; CNPS 1B.1), Crotch's bumblebee (*Bombus crotchii*; California Special Animal), western beach tiger beetle (*Cicindela latesignata latesignata*; California Special Animal), western tidal-flat tiger beetle (*Habroscelimorpha gabbii*; California Special Animal), light-footed Ridgway's rail, California least tern, Belding's savannah sparrow, western snowy plover, coastal California gnatcatcher, and osprey. The ecological value of BCER is compounded by the fact, as noted in the MND, that the surrounding area is predominantly developed and highly disturbed. Additionally, BCER is bordered by SR-1 on the southwestern side. Therefore, any permanent easements and temporary construction easements within BCER are potentially significant.

Recommended Potentially Feasible Mitigation Measure(s)

Mitigation Measure #1:

To reduce impacts to less than significant: Permanent easements within BCER, if approved, shall be mitigated at no less than a 10:1 mitigation ratio.

Mitigation Measure #2:

To reduce temporary impacts to less than significant: Temporary construction easements within BCER shall be restored at impact locations at no less than a 1:1 mitigation ratio. If impacts are not restored within 12 months of initiating the impacts, additional mitigation may be required due to temporal loss of habitat.

Mitigation Measure #3:

To reduce impacts to less than significant: Caltrans shall coordinate with and obtain CDFW approval regarding any proposed mitigation projects within BCER prior to finalizing any Environmental Document.

Comment #2: CEQA Checklist Biological Resources Item A MND Chapter 2, Pages 2-7 through 2-15

Issue #2: The impact analysis is not adequate to demonstrate the Project will avoid take of listed species. The MND indicates impacts will be less than significant for any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW, USFWS, or National Oceanic and Atmospheric Administration Fisheries. The MND states that indirect impacts to species are "expected to be minimal" because "those activities will be performed over a short period of time on highly traveled portions of SR-1."

Specific Impact: Listed nesting birds may potentially be significantly adversely affected by indirect impacts if nesting within 300 to 500 feet from the Project footprint.

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Why impact would occur: The BSA includes and/or is adjacent to BCER, Huntington Beach Wetlands, Talbert Marsh Inlet, Bolsa Chica Inlet, the mouth of the Santa Ana River, and Bolsa and Huntington State Beaches, in which many listed species are known to nest. Indirect impacts to nesting birds outside the Project footprint could extend 300 to 500 feet from a nest. However, the BSA surveys only include a 50- to 200-foot buffer in the impact analysis. If surveys are not conducted at least 300 feet from the Project site, indirect impacts to nesting birds may result in nest abandonment and potential take of listed species.

Recommended Potentially Feasible Mitigation Measure(s)

Mitigation Measure #4:

To reduce impacts to less than significant: Prior to initiating operations, Caltrans shall revise the BSA to extend between 300 and 500 feet from the Project footprint where suitable nesting habitat exists.

Mitigation Measure #5:

To reduce impacts to less than significant: Caltrans shall conduct nesting bird surveys within all suitable nesting habitat within the revised BSA during the nesting season prior to initiating operations. If activities continue into the next nesting season, additional surveys shall be conducted.

Recommendation #1:

To reduce impacts to less than significant: Caltrans should provide additional detail as to why impacts are expected to be minimal. The details should include biological evidence that the duration of activities and proximity to the highway would result in minimal impacts. Additionally, unless Caltrans intends to obtain an Incidental Take Permit for listed species, direct and indirect impacts to listed species should be avoided rather than minimized.

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: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of 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 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.)

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CONCLUSION

CDFW appreciates the opportunity to comment on the ND to assist Caltrans in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Simona Altman, Senior Environmental Scientist (Specialist), at (805) 338-0474 or Simona.Altman@wildlife.ca.gov.

Sincerely,

DocuSigned by:



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REFERENCES

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Lu, Brian. California Department of Transportation. Dated October 22, 2021. Email with Nicole Dobroski and Kyle Rice regarding State Route 1 Bike Lane Project and Preparation of a Preliminary Section 4f De Minimis Finding for Bolsa Chica Ecological Reserve. On file, California Department of Fish and Wildlife R5 Office.

Lu, Brian. California Department of Transportation. Dated November 18, 2021. Telephone communication regarding the project description of the SR-1 Bike Lane Facility Improvements Project. On file, California Department of Fish and Wildlife R5 Office.

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CDFW recommends the following language to be incorporated into a future environmental document for the Project.

Mitigation Measures			
	Mitigation Measure	Timing	Responsible Party
MM-BIO-1-Permanent Easement Compensatory Mitigation	Permanent easements within BCER, if approved, shall be mitigated at no less than a 10:1 mitigation ratio.	Prior to finalizing the Environmental Document	Caltrans
MM-BIO-2-Temporary Construction Easement Restoration	Temporary construction easements within BCER shall be restored at impact locations at no less than a 1:1 mitigation ratio. If impacts are not restored within 12 months of initiating the impacts, additional mitigation may be required due to temporal loss of habitat.	Prior to finalizing the Environmental Document	Caltrans
MM-BIO-3-Coordinate Mitigation Project Proposals in BCER with CDFW	Caltrans shall coordinate with and obtain CDFW approval regarding any proposed mitigation projects within BCER prior to finalizing any Environmental Document.	Prior to finalizing the Environmental Document	Caltrans
MM-BIO-4-Revise BSA Extent	Prior to initiating operations, Caltrans shall revise the BSA to extend between 300 and 500 feet from the Project footprint where suitable nesting habitat exists.	Prior to finalizing the Environmental Document	Caltrans

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<p>MM-BIO-5-Survey for Nesting Birds within Revised BSA</p>	<p>Caltrans shall conduct nesting bird surveys within all suitable nesting habitat within the revised BSA during the nesting season prior to initiating operations. If activities continue into the next nesting season, additional surveys shall be conducted.</p>	<p>Prior to finalizing the Environmental Document</p>	<p>Caltrans</p>
<p>Recommendations</p>			
<p>REC-BIO-1-Detailed Explanation of How Impacts are Minimal</p>	<p>Caltrans should provide additional detail as to why impacts are expected to be minimal. The details should include biological evidence that the duration of activities and proximity to the highway would result in minimal impacts. Additionally, unless Caltrans intends to obtain an Incidental Take Permit for listed species, direct and indirect impacts to listed species should be avoided rather than minimized.</p>	<p>Prior to finalizing the Environmental Document</p>	<p>Caltrans</p>