



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



January 20, 2022

Juergen Vespermann
California Department of Transportation, District 6
2015 East Shields Avenue, Suite 100
Fresno, California 93721
juergen.vespermann@dot.ca.gov

**Subject: State Route 198 Culvert Repair/Replacement Project (Project)
Initial Study with proposed Negative Declaration
State Clearinghouse No. 2021120503**

Dear Mr. Vespermann:

The California Department of Fish and Wildlife (CDFW) received a proposed Negative Declaration (ND) and its supporting Initial Study (IS) prepared by the California Department of Transportation (Caltrans) for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹ The IS was reportedly supported by a Natural Environment Study which was cited in the IS, but not provided or made available for review.

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 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

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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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.), related authorization as provided by the Fish and Game Code will be required.

PROJECT DESCRIPTION SUMMARY

Proponent: Caltrans

Objective: Caltrans proposes to repair or replace as many as 140 culverts which occur beneath the State Route 198 roadway between post mile 1 (near the Tulare/Kings County line) and post mile 44 (east of Lake Kaweah) in Tulare County (Project). All Project-related activities will occur within the existing right-of-way either within the paved travel lanes, paved shoulders adjoining the travel lanes, unpaved but compacted and engineered shoulder backing, or within the ruderal habitat areas beyond the travel lanes and shoulder backing. The Project will involve vegetation removal, temporary construction easements, and permanent drainage easements, but will be accomplished while the streams are naturally dry so water diversions will not be needed. Additionally, no nightwork is anticipated. Caltrans indicates that CDFW will be notified for those Project activities which will occur within streams.

Location: The 43-mile segment of State Route 198 (SR 198) where the subject culverts exist is entirely located within Tulare County, and is bound by urban, rural, and agricultural development, and natural lands along its length.

Timeframe: Unspecified.

COMMENTS AND RECOMMENDATIONS

During botanical and wildlife surveys conducted during preparation of the IS, Caltrans did not observe any special-status plants or animals. Caltrans plans to conduct additional botanical surveys in advance of commencing Project activities, as well as protocol-level surveys for the State threatened Swainson's hawk (*Buteo swainsoni*) (SWHA). However, Caltrans does not propose additional surveys for the State fully protected golden eagle (*Aquila chrysaetos*), the State endangered and State fully protected bald eagle (*Haliaeetus leucocephalus*), the State and federally endangered and State fully protected California condor (*Gymnogyps californianus*), the rare and endemic Crotch bumble bee (*Bombus crotchii*) which is a Species of Greatest Conservation Need (SGCN) in California (CDFW 2015), or nesting birds in general in advance of commencing Project Activities.

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Caltrans indicates in the IS that if special status plant populations are detected during the pre-activity surveys, they will be avoided. Further, Caltrans indicates that if work is conducted during the SWHA nesting season, active nests will be avoided observing a 500-foot no-disturbance buffer. However, CDFW does not agree that these avoidance and minimization measures sufficiently reduce to less-than-significant the potential Project-related impacts to biological resources at and near the Project area.

CDFW offers the following comments to assist Caltrans in adequately identifying and sufficiently 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.

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: Migratory Birds including Swainson's Hawk (SWHA) and California Condor, golden eagle, and Bald Eagle

Issue: Migratory birds are known to nest in trees and shrubs along the entire 43-mile Project area. Additionally, SWHA are known to nest in trees along the western portion of the Project area, and bald eagle and California condor are known to occur in areas adjoining the eastern portion of the Project area. The Project activities will involve varying degrees of ground disturbance within the right-of-way and CDFW considers it possible that the Project-related activities would represent a novel stimulus which could result in nest abandonment if they occur in proximity to nesting birds. This nest abandonment would represent a significant impact to nesting birds, including SWHA, bald eagle, and California condor, and could result in take as it is defined in section 86 of Fish and Game Code.

Specific Impacts: In the IS, Caltrans states that because active SWHA nests could occur at or sufficiently close to the Project area, protocol level surveys will be conducted the nesting season prior to the commencement of Project activities. Further, Caltrans proposes the implementation of a 500-foot no-disturbance buffer around active SWHA nests in the event any are detected during these surveys. CDFW recommends these surveys, as well as surveys for bald eagle, California condor, and nesting birds in general be conducted no more than 30 days prior to the commencement of Project activities (if those activities occur or extend into the nesting season). Further, CDFW considers the proposed 500-foot no-disturbance buffer for either SWHA, bald eagle, or California condor insufficient to avoid take of individuals of those species. Therefore, CDFW does not agree that the proposed pre-construction surveys for SWHA alone reduces to less-than-significant the potential Project-related impacts on nesting birds.

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Evidence impact would be significant: SWHA in particular exhibit high nest-site fidelity year after year and lack of suitable nesting habitat in the San Joaquin Valley limits their local distribution and abundance (CDFW 2016). Adoption of the ND as it is written will allow activities that will involve ground disturbance, roadwork, grading, and excavation employing heavy equipment and work crews within ½-mile of active listed raptors including SWHA, bald eagle, and California condor nests, and within 500 feet of non-listed raptors, and within 250 feet of passerines. These activities could negatively affect these nests and have the potential to result in nest abandonment.

Recommended Potentially Feasible Avoidance and Mitigation Measure(s) Because the Project-related activities represent novel stimuli and threaten nest abandonment, CDFW recommends Caltrans propose surveying for, and maintaining a 250-foot no-disturbance buffer around active passerine nests, a 500-foot no-disturbance buffer around non-listed raptor nests, and a ½-mile no-disturbance buffer around listed raptor (e.g., SWHA, bald eagle, and California condor) nests in order to reduce to less-than-significant the Project-related impacts to nesting birds. CDFW recommends edits to the existing SWHA Avoidance, Minimization, and Mitigation Measures section of the IS, and incorporation of similar measures providing for the complete avoidance of impacts to nesting bald eagle, California condor, and nesting birds in general. Further, CDFW recommends these revised/additional measures be made quantifiable and enforceable conditions of Project approval.

Recommended Edits to Avoidance, Minimization, and Mitigation Measures section of the IS which begins on page 31 of the IS.

Currently, under the Avoidance, Minimization, and Mitigation Measures section of the IS, Caltrans proposes conducting surveys for SWHA at and near the Project area the “season before construction” and implementation of a 500-foot no-disturbance buffer around active nests that are detected. CDFW recommends Caltrans conduct these surveys for SWHA no more than 30 days prior to starting Project activities at all culverts which occur within ½ mile of suitable SWHA nesting habitat. Further, CDFW advises Caltrans implement a ½-mile no-disturbance buffer around any active nest trees detected, until the young have fledged and are no longer reliant on parental care.

Additionally, because golden eagle, bald eagle, California condor, and nesting birds in general may occur or near the Project area, CDFW recommends surveys for these species and nesting birds in general be conducted no more than 30 days prior to commencing Project activities. Further CDFW recommends maintaining ½-mile no-disturbance buffers around all active fully protected raptor (e.g., golden eagle, bald eagle, and California condor) nests, 500-foot no-disturbance buffers around all active unlisted raptor nests, and 250-foot no-disturbance buffers around all active passerine nests.

If the aforementioned edits to the existing Avoidance, Minimization, and Mitigation Measures section of the IS are not made for SWHA, and/or the aforementioned

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buffers are not feasible, CDFW recommends Caltrans obtain incidental take coverage under section 2081 subdivision (b) of Fish and Game Code and that the acquisition of an ITP be specified in the revised IS. In summary, if the edited avoidance measure is not feasible, mitigation (take authorization) would be required to reduce to less-than-significant the unavoidable Project-related impacts to SWHA. Due to the State fully protected status, CDFW cannot authorize incidental take of California condor, golden eagle, or bald eagle.

COMMENT 2: Crotch Bumble Bee (CBB)

Issue: CBB have been documented to occur within areas of suitable habitat within the Project vicinity (CDFW 2022). 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.

While much of the land on both sides of the Project site exists as commercial development, there are discreet areas adjoining the west end of the Project area which persist as ruderal, scrub, and grassland habitat. CDFW recommends Caltrans conduct an assessment of these habitat areas adjoining the Project area 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 and adjoining the Project area, 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 take of the species. In the IS, Caltrans does not address the potential for the presence of CBB at or near the Project area.

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 and adjoining portions of the Project Area and Project-related ground disturbance in these areas could result in significant impacts to the species.

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Recommended Potentially Feasible Avoidance, Minimization, and Mitigation

Measure: Because suitable CBB habitat may be present in the vicinity of at least portions of the Project Area, CDFW recommends the following measure be added to ensure that impacts to the species will be less-than-significant and completely avoided. 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 right-of-way or adjoining lands, CDFW recommends Caltrans revise the Avoidance, Minimization, and Mitigation Measures section of the IS to include plans to assess whether habitat areas within or adjoining the right-of-way 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-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.

II. Editorial Comments and/or Suggestions

Appropriateness of ND: In summary, the above recommended revisions to the IS pertain to avoidance of nesting birds including SWHA, bald eagle, California condor and nesting birds in general within the specified buffers from the Project right-of-way to completely avoid significant effects to the species under this Negative Declaration. If surveys confirm the presence of nesting birds at or within the specified buffers, Caltrans may not be able to accomplish the Project while avoiding significant effects to these species without first obtaining incidental take authorization under section 2081 subdivision (b) of Fish and Game Code. Incidental take authorization would involve minimization of, and mitigation for, take of the permitted species. Considering this, CDFW recommends Caltrans incorporate the recommended revisions to the IS and propose an MND for the Project, in lieu of the currently proposed ND.

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

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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: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

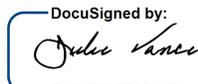
FILING FEES

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be 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).

CDFW appreciates the opportunity to comment on the Project to assist Caltrans in identifying and avoiding 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 Steven Hulbert, Senior Environmental Scientist (Specialist), at the address provided on this letterhead, by telephone at (559) 575-6415 or by electronic mail at Steven.Hulbert@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Julie A. Vance
Regional Manager

Attachment

cc: See Page Eight

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

ec: State Clearinghouse
state.clearinghouse@opr.ca.gov

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California Department of Fish and Wildlife

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- Williams, P. H., R. W. Thorp, L. L. Richardson, and S. R. Colla. 2014. *The Bumble Bees of North America: An Identification guide*. Princeton University Press, Princeton, New Jersey, USA. 208 pp.
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Attachment 1

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

**PROJECT: State Route 198 Culvert Repair/Replacement Project
(Project)**

SCH No.: 2021120503

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: SWHA, bald eagle, California condor, and nesting bird Avoidance	
Mitigation Measure 2: SWHA and bald eagle Take Authorization (if avoidance is not feasible)	
Mitigation Measure 3: CBB Avoidance	
Mitigation Measure 4: CBB Consultation with CDFW (if avoidance is not feasible)	