State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

March 17, 2022

Jennifer Taylor
California Department of Transportation, District 6
2015 East Shields Avenue, Suite 100
Fresno, California 93726

**Subject: Blackwell's Corner Capital Preventative Maintenance (Project)
Initial Study with proposed Mitigated Negative Declaration
State Clearinghouse No. 2022010218**

Dear Ms. Taylor:

The California Department of Fish and Wildlife (CDFW) received a proposed Mitigated Negative Declaration (MND) 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]

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. While the comment period may have ended, we appreciate your consideration of our comments.

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

[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.

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

PROJECT DESCRIPTION SUMMARY

Proponent: Caltrans

Objective: Caltrans proposes to rehabilitate an approximately 18.6-mile segment of State Route 33 (SR 33) between Post Mile 40.4 and Post Mile 59.0 (Project site) in Kern County. All Project-related activities will occur within the existing right-of-way within the paved travel lanes, the unpaved but compacted and engineered shoulder backing, proposed new right-of-way, or within the ruderal areas beyond the travel lanes and shoulder backing. Work would include resurfacing of the existing SR 33, repair of localized failures, the sealing of cracks wider than 1.25-inches, loop Vehicle Detection Systems, the creation of centerline rumble strips, and the repair or replacement of existing culvert locations. Activities include trenching, grading, and resurfacing outside shoulders.

Location: The Project site exists between Post Mile 40.4 and Post Mile 59.0 and is north of the City of McKittrick in Kern County.

Timeframe: Unspecified

COMMENTS AND RECOMMENDATIONS

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.

Currently, the proposed IS/MND indicates that the Project-related impacts to Biological Resources would be less-than-significant with implementation of specific avoidance and minimization efforts. In particular, Caltrans concludes there will be less-than-significant

impacts to the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State and federally endangered giant kangaroo rat (*Dipodomys ingens*), the State and federally endangered and State fully protected blunt-nosed leopard lizard (*Gambelia sila*), and the State species of special concern burrowing owl (*Athene cunicularia*).

However, as currently drafted, it is unclear whether the measures proposed in the IS/MND sufficiently reduce, to less-than-significant, the potential Project-related impacts to the State-listed and special status species. Therefore, CDFW does not agree with these conclusions and herein suggests measures to minimize and avoid Project-related impacts to special status species. CDFW also recommends that Caltrans identify a path forward in the event that avoidance of any State-listed species is not feasible.

I. Environmental Setting and Related Impact

Would the Project have a substantial adverse impact, 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: San Joaquin kit fox (SJKF)

Issue: The Project activities will involve varying degrees of ground disturbance and the staging and laydown of equipment and materials at discreet locations along the 18.6 mile segment of SR 33. Some of the Project activities may constitute a novel disturbance sufficient to cause denning SJKF to abandon their dens causing increased susceptibility to predation and resulting in abandoned pups. Caltrans proposes pre-activity clearance surveys of the Project footprint and a 200-foot buffer between 14 and 30 days of commencing project activities, the daily inspection of deep trenches and steep-walled holes within the Project footprint, and the inspection of pipes greater than three inches in diameter prior to burying, capping, or moving in any way. Further, while Caltrans proposes consulting with USFWS in the event individual SJKF are detected during these surveys and/or inspections, Caltrans does not propose consulting with CDFW.

Specific Impacts: While CDFW agrees with Caltrans' plans to conduct pre-activity surveys and daily inspections of trenches, ditches, and materials at the Project footprint, CDFW recommends the pre-activity surveys be done to detect individuals and dens beyond the 200-foot area surrounding the Project footprint. Additionally, CDFW recommends Caltrans consult with CDFW in the event SJKF are detected during the surveys and/or inspections.

Evidence impact would be significant: While habitat loss resulting from agricultural, urban, and industrial development is the primary threat to SJKF (Cypher

et al., 2013), disturbance in proximity to a den can result in unsuccessful pupping and cause individuals to become more susceptible to predation. Both results of the Project-related disturbance could constitute significant effects to the species.

Recommended Potentially Feasible Avoidance and Mitigation Measure(s)
Because SJKF are known to occur in the general vicinity of the Project footprint and because dens could be present outside the Project footprint but sufficiently near the Project footprint to be affected by the Project-related activities, CDFW recommends the following edits to the SJKF avoidance and minimization measure section of the IS. Further, CDFW recommends these revised measures be made conditions of Project approval.

Recommended Edits to Avoidance and Minimization Measures to specifically address SJKF in the IS.
CDFW recommends the pre-activity clearance surveys for SJKF be conducted to identify SJKF dens at **and within 250 feet of the Project footprint**, and that Caltrans coordinate with USFWS **and CDFW** in the event that individuals and/or dens are detected during these surveys. These surveys can be limited to 100 feet beyond the Project footprint if work commences outside the pupping season. Through the aforementioned coordination, CDFW will recommend a 250-foot no disturbance buffer around natal dens, a 100-foot no disturbance buffer around known dens, and a 50-foot no-disturbance buffer around potential or atypical dens, and absolutely no disturbance to the dens within the above buffers without contacting CDFW and obtaining written authorization to do so. If the above edits to the existing avoidance and minimization measures are not made, and/or the aforementioned buffers are not feasible, Caltrans should propose obtaining incidental take coverage under section 2081 subdivision (b) of Fish and Game Code in the revised IS, and that the revised IS support a MND. In summary, if implementation of the edited avoidance measure is not feasible, additional mitigation (take authorization from CDFW) would be required to reduce SJKF impacts to less-than-significant and to comply with CESA.

COMMENT 2: Giant Kangaroo Rat (GKR) and Blunt-nosed Leopard Lizard (BNLL)

Issue: Both GKR and BNLL are known to occur in the general vicinity of the Project site. While much of the Project will occur on existing paved areas, there are discreet areas adjoining the Project which persist as suitable habitat. Caltrans proposed to survey 50-feet around existing culverts where work will occur, but did not propose an avoidance buffer for the species. CDFW recommends Caltrans conduct an assessment of these ruderal areas adjoining the Project site for potentially suitable GKR and BNLL habitat. If suitable GKR and BNLL habitat exists in areas of planned Project-related ground disturbance, equipment staging, or materials laydown, burrow openings in these areas would have to be completely avoided by a minimum of 50 feet in order to avoid possible take of the species.

Specific Impacts: Without a determination with respect to the presence or absence of even marginal GKR and/or BNLL habitat at and adjoining the Project site, CDFW cannot concur that the Project-related impacts to both or either species will be avoided or are less-than-significant. Both BNLL and GKR spend much of their time underground in burrows which extend as far as 50 feet from a burrow opening and unless those burrow openings are avoided by at least 50 feet, Project-related ground disturbance can result in take of the species through burrow chamber collapse, entrapment, etc. In the IS, Caltrans indicates that the Project will not result in any significant impact to either species. Caltrans does propose pre-activity surveys for both species but does not ascribe quantified buffer distances to avoid burrow openings which may exist within the ruderal portions of the right-of-way or adjoining ruderal lands.

Evidence impact would be significant: Habitat loss resulting from agricultural conversion and development is the primary threat to both GKR and BNLL. GKR are known to have occur in ruderal areas, which have connectivity to portions of the Project right-of-way. Both GKR and BNLL could continue to occupy ruderal areas within and adjoining these portions of the Project right-or-way and Project-related ground disturbance in these areas could result in take and significant impacts to both or either species.

Recommended Potentially Feasible Avoidance and Mitigation Measure(s)
Because suitable GKR and/or BNLL habitat may be present in the vicinity of at least portions of the Project area, CDFW recommends the following avoidance and minimization measures be added to ensure that effects to the species will be less-than-significant and completely avoided. Further, CDFW recommends these measures be made conditions of Project approval.

Recommended Mitigation Measure: Recommended inclusion of Avoidance and Minimization Measures for BNLL and GKR in the IS.
In order to determine if GKR and/or BNLL occupy ruderal parts of the right-of-way or adjoining lands, CDFW recommends Caltrans revise the IS to include plans to assess whether ruderal lands within or adjoining (within 50 feet) the right-of-way constitute suitable habitat for GKR or BNLL. If not, this should be addressed in the IS and no further measures would be needed. But if suitable habitat is present at or within 50 feet of the right-of-way, and suitable burrows cannot be avoided, CDFW recommends the IS include a measure involving protocol-level surveys for both species in advance of commencing Project activities. If no individuals are detected during these surveys, Caltrans could potentially construct the Project and avoiding the species and associated significant impacts. However, if GKR and/or BNLL are found to occupy areas within or adjacent to the right-of-way, the Project would have the potential to result in take and significant impacts to the species. If burrow avoidance is not

feasible, in advance of Project implementation, Caltrans should consult with CDFW regarding how to implement the Project in a manner that complies with CESA.. While Caltrans could seek and obtain incidental take coverage under section 2081 subdivision (b) of Fish and Game Code for Project-related take of GKR, CDFW cannot issue the same coverage for BNLL due to its State fully-protected status.

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 subsequent 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). Therefore, subsequent ground-disturbing activities associated with the Project have the potential to significantly impact local BUOW populations. In addition, and as described in CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), excluding and/or evicting BUOW from their burrows is considered a potentially significant impact under CEQA.

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 site, incorporating the following mitigation measures into the IS prepared for this Project, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure: 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: 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 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: 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.

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 CNDDB. The CNDDB field survey form can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data. The completed form can be mailed electronically to CNDDB at the following email

address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/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 Javier Mendez, Environmental Scientist, at the address provided on this letterhead, or by electronic mail at javier.mendez@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Julie Vance
FA83F09FE08945A...

Julie A. Vance
Regional Manager

Attachment 1: Recommended Mitigation Monitoring and Reporting Program

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

ec: Office of Planning and Research, State Clearinghouse
state.clearinghouse@opr.ca.gov

LITERATURE CITED

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.

Cypher, B. L., S. E. Phillips, and 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

Attachment 1

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

PROJECT: Blackwell's Corner Capital Preventative Maintenance Project

SCH No.: 2022010218

RECOMMENDED MITIGATION MEASURE	STATUS/ DATE/ INITIALS
Before Disturbing Soil or Vegetation	
Mitigation Measure 1: SJKF Habitat Assessment	
Mitigation Measure 2: SJKF Surveys	
Mitigation Measure 4: SJKF Take Authorization if Avoidance is not feasible	
Mitigation Measure 5: GKR Surveys	
Mitigation Measure 7: GKR Take Authorization if Avoidance not feasible	
Mitigation Measure 8: BNLL Avoidance	
Mitigation Measure 10: BUOW Surveys	
Mitigation Measure 12: BUOW Passive Relocation and Mitigation if Avoidance not feasible	
During Construction	
Mitigation Measure 3: SJKF Avoidance	
Mitigation Measure 6: GKR Avoidance	
Mitigation Measure 9: BNLL Avoidance	
Mitigation Measure 11: BUOW Avoidance	