



DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
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GAVIN NEWSOM, Governor  
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

Apr 28 2022

April 28, 2022

## STATE CLEARINGHOUSE

Cecilia Boudreau  
California Department of Transportation, District 9  
500 South Main Street  
Bishop, California 93514  
cecilia.boudreau@dot.ca.gov

**Subject: SR 58 Keene Pavement Project (Project)  
Initial Study with proposed Mitigated Negative Declaration  
SCH No.: 2022030729**

Dear Ms. Boudreau:

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.<sup>1</sup>

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

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<sup>1</sup> 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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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 upgrade existing pavement, guardrail, bridge rail, median barrier, drainage, and lighting along State Route (SR) 58 between post mile 77.20 and post mile 88.56 (Project Area). Additionally, Caltrans will realign two curved segments of SR 58 within the Project Area and may finalize design of the Project to enhance wildlife connectivity between areas of habitat adjoining the Project Area.

**Location:** The 11.36-mile segment of State Route 58 which will be upgraded and realigned exists between the cities of Bakersfield and Tehachapi in eastern 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. 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 reduced to less-than-significant by mitigating for the Project-related permanent impacts to two streams where the Project-related activities will include culvert replacement, and by restoring oak trees which will be impacted by Project-related activities. While Caltrans references a Natural Environment Study (NES) which supports the IS/MND, the NES was not provided and it is unclear whether adoption of the MND would make the species avoidance measures assumably presented in the

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NES, conditions of Project approval. CDFW is concerned that Project-related activities could significantly impact: the State endangered foothill yellow-legged frog (*Rana boylei*); the State threatened Swainson's hawk (*Buteo swainsoni*) (SWHA) and Tehachapi slender salamander (*Batrachoseps stebinsi*); the State species of special concern burrowing owl (*Athene cunicularia*), western spadefoot (*Spea hammondi*), coast horned lizard (*Phrynosoma blainvillii*), and California legless lizard (*Anniella* sp.); and the rare and endemic Crotch bumble bee (*Bombus crotchii*) a Species of Greatest Conservation Need (SGCN) in California (CDFW 2015). Our specific comments follow.

## **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: Swainson's Hawk (SWHA)**

**Issue:** SWHA have been documented in the Project vicinity (CDFW 2022). In the IS, Caltrans does not address the potential presence of nesting SWHA, or measures Caltrans will implement to avoid impacts (including take) on the species. CDFW recommends that in order to less than significant the Project-related impacts to the species, Caltrans incorporate avoidance measures or commit to obtaining incidental take coverage under section 2081(b) of Fish and Game Code prior to commencing Project activities.

**Specific Impacts:** The Project activities will involve varying degrees of ground disturbance within the right-of-way. While CDFW agrees that SWHAs in the area may have become habituated to vehicular traffic along the right-of-way and farming activities on the adjoining lands, CDFW considers it possible that the Project-related activities would represent a novel stimulus which could result in nest abandonment if those activities occur within ½-mile of an active SWHA nest. This nest abandonment would represent a significant impact to SWHA and possibly take of the State Threatened species as it is defined in section 86 of Fish and Game Code.

**Evidence impact would be significant:** SWHA 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 MND as it is written will allow activities that will involve ground disturbance, grading, and excavation employing heavy equipment and work crews within an unspecified buffer around active SWHA nests. These activities could affect these nests and have the potential to result in nest abandonment, significantly effecting nesting SWHA.

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**Recommended Potentially Feasible Avoidance and Mitigation Measure(s)** Because the Project-related activities represent novel stimuli and threaten nest abandonment, CDFW recommends Caltrans propose surveys for, and no-disturbance buffers around, active SWHA nests in order to reduce to less-than-significant the Project-related effects on the species. CDFW recommends the following SWHA avoidance measure be incorporated into the *Avoidance, Minimization, and/or Mitigation Measures* section of the IS. Further, CDFW recommends these measures and be made conditions of Project approval.

**Recommended Avoidance, Minimization and/or Mitigation Measures for SWHA:**

CDFW recommends Caltrans commit to conducting **protocol level surveys** for nesting SWHA if Project-related activities will occur during, or extend into, the SWHA nesting season (February through August). Further CDFW recommends Caltrans require an **unqualified ½-mile no-work buffer** around active SWHA nests until the young have fledged and are no longer reliant on parental care for survival. If the aforementioned avoidance measures are not feasible, CDFW recommends Caltrans propose obtaining incidental take coverage under section 2081(b) of Fish and Game Code in the revised IS. In summary, if the edited avoidance measures are not feasible, mitigation (take authorization through the acquisition of a Incidental Take Permit (ITP) pursuant to Fish and Game Code section 2081(b) would be required to reduce to less-than-significant the unavoidable Project-related effects to SWHA.

**COMMENT 2: Foothill Yellow-Legged Frog (FYLF)**

**Issue:** FYLF are primarily stream dwelling and requires shallow, flowing water in streams and rivers with at least some cobble-sized substrate (Thomson et al. 2016). FYLF have been documented to occur in the Project vicinity (CDFW 2022). The Project site contains habitat that may support FYLF. Avoidance and minimization measures are necessary to reduce impacts to FYLF to a level that is less than significant.

**Specific impact:** Without appropriate avoidance and minimization measures for FYLF, potentially significant impacts associated with the Project's activities include burrow collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of eggs, larvae and/or young, and direct mortality of individuals.

**Evidence impact would be significant:** FYLF throughout the State have experienced ongoing and drastic declines and many have been extirpated; historically, FYLF occurred in mountain streams from the San Gabriel River in Los Angeles County to southern Oregon west of the Sierra-Cascade crest (Thomson et al. 2016). Habitat loss from growth of cities and suburbs, invasion of nonnative plants, impoundments, water diversions, stream maintenance for flood control, degraded water quality, and

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introduced predators, such as bullfrogs are the primary threats to FYLF (Thomson et al. 2016). Project activities have the potential to significantly impact both species.

**Recommended Potentially Feasible Mitigation Measure(s)** To evaluate potential impacts to FYLF, CDFW recommends conducting the following evaluation of the Project site, incorporating the following mitigation measures into the EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

**Recommended Avoidance, Minimization and/or Mitigation Measures for FYLF:** CDFW recommends that a qualified wildlife biologist conduct surveys for FYLF in accordance with the USFWS “Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog” (USFWS 2005) to determine if FYLF are within or adjacent to the Project area; while this survey is designed for CRLF, the survey may be used for FYLF with focus on stream/river habitat.

If any FYLF are found during pre-construction surveys or at any time during construction, consultation with CDFW is warranted to determine if the Project can avoid take. CDFW recommends that initial ground-disturbing activities be timed to avoid the period when FYLF are most likely to be moving through upland areas (November 1 and March 31). When ground-disturbing activities must take place between November 1 and March 31, CDFW recommends a qualified biologist monitor construction activity daily for FYLF.

If through surveys it is determined that FYLF are occupying or have the potential to occupy the Project site and take cannot be avoided, take authorization would be warranted prior to initiating ground-disturbing activities. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081(b).

### **COMMENT 3: Tehachapi Slender Salamander (TSS)**

**Issue:** The TSS inhabits north-facing moist canyons and ravines in oak and mixed woodlands in arid to semi-arid locations and are found under rocks, talus, logs, bark, and other debris in moist areas, especially in areas with a lot of leaf-litter, often near talus slopes. TSS are known to occur in the vicinity of the Project area (CDFW 2022) and may occur in those areas along the Project Area where culvert divert streams under the roadway. Avoidance and minimization measures are necessary to reduce impacts to TSS to a level that is less than significant.

**Specific impact:** Without appropriate avoidance and minimization measures for TSS, potentially significant impacts associated with the Project’s activities include inadvertent entrapment, trampling, reduced reproductive success, reduction in health and vigor of eggs or young, and direct mortality of individuals.

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**Evidence impact would be significant:** TSS individuals occur at limited sites in the Tehachapi and Fort Tejon areas and its limited numbers makes it extremely vulnerable to any changes in its habitat. If they occur in association with the streams which cross under the roadway within the Project area, Project activities have the potential to significantly impact the species.

**Recommended Potentially Feasible Mitigation Measure(s)** To evaluate potential impacts to TSS, CDFW recommends assessing the streams which cross under the Project area, and surveying individuals within any suitable habitat identified prior to commencing work in those areas. CDFW recommends these assessment and survey measures be implemented in order to reduce to less-than-significant the Project-related impacts on the species. Further, CDFW recommends these measures be made conditions of approval for the Project.

**Recommended Avoidance, Minimization and/or Mitigation Measures for TSS:** CDFW recommends that a qualified wildlife biologist assess the streams and any adjoining riparian areas which occur within the Project area to determine if suitable TSS habitat is present.

If any suitable TSS habitat is available, a qualified biologist, having experience with the ecology and natural history of the species survey for individuals prior to any ground disturbing Project-related activities. Further, CDFW recommends a qualified biologist monitor construction activities within the streams daily for individual TSS which may wander into the work areas. If any TSS are detected during these pre-activity surveys or at any time during Project-activities, consultation with CDFW is warranted to determine if the Project can avoid take.

If through surveys it is determined that TSS are occupying or have the potential to occupy the Project site and take cannot be avoided, take authorization would be warranted prior to initiating ground-disturbing activities. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081(b).

#### **COMMENT 4: 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

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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 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 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 impacts to 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 the Project area 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 Avoidance, Minimization, and/or Minimization Measures for CBB.***

In order to determine if CBB occupy habitat areas of the Project area, CDFW recommends Caltrans revise the IS to include plans to assess whether habitat areas of the Project area 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.

#### **COMMENT 5: Burrowing Owl (BUOW)**

**Issue:** BUOW have been documented in the Project vicinity (CDFW 2022). BUOW inhabit open grassland or adjacent canal banks, right-of-ways, vacant lots, etc. containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover. Review of aerial imagery indicates that some of the Project site is bordered by annual grassland and potentially fallow agricultural fields and may be present within the Project site.

**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). The Project site is bordered by some of the only remaining undeveloped land in the vicinity, which is otherwise intensively managed for agriculture. 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 area, incorporating the following mitigation measures into the Initial Study prepared for this Project, and that these measures be made conditions of approval for the Project.

#### **Recommended Avoidance, Minimization, and Mitigation Measures for BUOW**

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).

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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. These surveys are to determine if there are more BUOW in addition to the December 2017 observation surveyed for the Project.

CDFW also 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)

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.

#### **COMMENT 6: Coast Horned Lizard and California Legless Lizard**

**Issue:** Coast horned lizards and California legless lizards have been documented in the Project vicinity (CDFW 2022). Both occur in a wide variety of habitat types but require loose, fine soils for burrowing, open areas for thermoregulation, and shrub cover for refugia (Thomson et al. 2016). While CDFW has not toured the Project area, a

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review of aerial imagery indicates that portions of the Project area are comprised of and surrounded by these requisite habitat features.

**Specific impact:** Without appropriate avoidance and minimization measures for both coast horned lizards and California legless lizards, potentially significant impacts associated with ground disturbance include burrow abandonment, which may result in reduced health or vigor of eggs and/or young, and direct mortality.

**Evidence impact is potentially significant:** Habitat loss and fragmentation resulting from development is the primary threat to coast horned lizard (Thomson et al. 2016) and California legless lizard. The Project area is within the range of both species and portions of the Project area appear to be comprised of, and bordered by, suitable habitat. As a result, ground-disturbing activities associated with development of the Project area have the potential to significantly impact local populations of this species.

### **Recommended Potentially Feasible Mitigation Measure(s)**

To evaluate potential impacts to coast horned lizard and California legless lizard associated with the Project, CDFW recommends conducting the following evaluation of the Project area and including the following minimization measures in the Initial Study and making them conditions of Project approval.

#### **Recommended Avoidance, Minimization, and Mitigation Measures for Coast Horned Lizard and California Legless Lizard**

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of project implementation, to determine if the Project area or its immediate vicinity contain suitable habitat for coast horned lizard.

If suitable habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for coast horned lizard and their requisite habitat features to evaluate potential impacts resulting from ground- and vegetation-disturbance.

Avoidance whenever possible is encouraged via delineation and observance of a 50-foot no-disturbance buffer around burrows.

### **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

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can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto: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 Steve Hulbert, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 575-6415, or by electronic mail at [Steven.Hulbert@wildlife.ca.gov](mailto:Steven.Hulbert@wildlife.ca.gov).

Sincerely,

DocuSigned by:



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Valerie Cook  
Acting Regional Manager  
Central Region

Attachment 1: Recommended Mitigation and Monitoring Reporting Program

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

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1  
**Attachment 1**

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

**PROJECT: SR 58 Keene Pavement Project**

**SCH No.: 2022030729**

<b>RECOMMENDED MITIGATION MEASURE</b>	<b>STATUS/DATE/ INITIALS</b>
Mitigation Measure 1: SWHA Avoidance	
Mitigation Measure 2: SWHA Take Authorization (if avoidance is not feasible)	
Mitigation Measure 3: FYLF Avoidance	
Mitigation Measure 4: FYLF Take Authorization (if avoidance is not feasible)	
Mitigation Measure 5: TSS Avoidance	
Mitigation Measure 6: TSS Take Authorization (if avoidance is not feasible)	
Mitigation Measure 7: CBB Avoidance	
Mitigation Measure 8: CBB consultation with CDFW	
Mitigation Measure 9: BUOW Avoidance/Minimization	
Mitigation Measure 10: Coast Horned Lizard and California legless Lizard Avoidance/Minimization	