



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
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Ontario, CA 91764
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



May 6, 2022
Sent via email



Shawn Oriaz, Senior Environmental Planner
California Department of Transportation, District 8
464 W. 4TH Street, MS 827
San Bernardino CA, 92401

Subject: Mitigated Negative Declaration
State Route 66 and Interstate 215 Roadway Rehabilitation, and Pedestrian
Facilities and Bridge Upgrading
State Clearinghouse No. 2022040328

Dear Mr. Oriaz:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the California Department of Transportation, District 8 (Caltrans) for the State Route 66 and Interstate 215 Roadway Rehabilitation, and Pedestrian Facilities and Bridge Upgrading 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

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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agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources. CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

ASSEMBLY BILL (AB) 819

Assembly Bill (AB) 819 was signed into law by Governor Gavin Newsom on July 16, 2021, and became effective January 1, 2022. AB 819 requires lead agencies to submit certain environmental documents and notices electronically to the State Clearing House (SCH) at Office of Planning and Research (OPR). Thus, as of January 1, 2022, lead agencies must take the following actions to comply with CEQA:

- File on CEQAnet – Draft Environmental Impact Reports (DEIR), proposed Negative Declarations (ND), proposed Mitigated Negative Declarations (MND) must be filed electronically on CEQAnet (<https://ceqanet.opr.ca.gov/>) – as opposed to submitting hard copies.
- Post on Agency website – Draft, proposed, and final environmental documents – including DEIRs, EIRs, NDs, MNDs – as well as any Notice of Preparation (NOP), Notice of Determination (NOD), Notice of Completion, or Notice of Scoping Meetings must be posted on the lead agency's website if it has one. Also, Notices of Availability (NOAs) and hearings related to the DEIR or ND are required to be posted on the lead agency's website, in addition to prior methods of giving notice.
- File and Post with County – NODs must be filed electronically with the county clerk if electronic filings are offered by the county. There is an option to post NODs either in the county clerk's office or on the county clerk's website for a period of 30 days. Additionally, NOPs and NOAs will need to be posted on the county clerk's website and physically, by hard copy, in the county clerk's office.
- Option to email NOPs – If an EIR is required, any NOP may be emailed, rather than mailed, to each entity requiring personal notice – the responsible agency, any public agency with jurisdiction over natural resources affected by the project, and OPR.
- State Agency Filings – State lead agencies are required to file NODs and Notice of Exemptions (NOEs) electronically on CEQAnet and no longer need to submit hard copies. The filed notice must be available for public inspection on the OPR website for not less than 12 months.

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- Public Agency Notice of Completion – Public agencies must file notices of completion on CEQAnet, rather than mailing a paper copy.

PROJECT DESCRIPTION SUMMARY

The Project site is in the City of San Bernardino within San Bernadino County in the State of California. The Project proposes to rehabilitate the roadway and upgrade the pedestrian facilities and bridges along State Route 66 (SR-66) from Pepper Avenue to H Street, and on Interstate 215 at Little League Drive overcrossing.

Timeframe: Unavailable

COMMENTS AND RECOMMENDATIONS

Biological resources of concern to CDFW that the Project could potentially impact include San Bernardino kangaroo rat (*Dipodomys merriami parvus*; California Endangered Species Act (CESA) candidate endangered species), Los Angeles pocket mouse (*Perognathus longimembris brevinasus*; CDFW Species of Special Concern [SSC]), burrowing owl (*Athene cunicularia*; CDFW SSC), western yellow bat (*Nyctinomops femorosaccus*; CDFW SSC), coast live oak (*Quercus agrifolia*), Santa Ana River woolly star (*Eriastrum densifolium ssp. Sanctorum*; CESA endangered species), Riversidean alluvial fan sage scrub (RAFSS; California State Rank (S)1 [critically imperiled]), and nesting birds.

The MND states that the following surveys were conducted to access the biological resources within the Project's biological study area (BSA):

1. A Google Earth Pro virtual "windshield survey" on December 20, 2020.
2. A general habitat assessment and bat habitat suitability assessment at Lytle Creek Basin Overhead, Lytle Creek Channel, and East Branch Lytle Creek bridges on February 12, 2021.
3. A general habitat assessment and bat habitat suitability assessment at Little League Drive Overcrossing Bridge on May 13, 2021.
4. A bat habitat suitability assessment survey on October 27, 2021, at Lytle Creek Basin Overhead, Lytle Creek Channel, East Branch Lytle Creek, and Little League Drive Overcrossing bridges.
5. A general habitat assessment survey on an old and open agricultural property on the northwest corner of SR-66 and Terrace Road On November 28, 2021.
6. Small mammal trapping in the Riversidean alluvial fan sage scrub within the BSA in 2016.

Despite the above surveys being conducted, the MND did not provide survey results. Absent these details, and supporting documentation, it is unclear whether the Project's impacts have been adequately identified, disclosed, or mitigated. Because Caltrans has

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not provided a proper analysis of biological resources with potential to occur on-site, CDFW believes the MND does not demonstrate that impacts to biological resources are less than significant, even with the inclusion of biological (BIO) mitigation measures (MM). Thus, CDFW offers the mitigation measures presented below along with comments and recommendations to assist Caltrans in adequately mitigating the Project's potentially significant impacts on biological resources. CDFW requests that Caltrans adopts the mitigation measures listed below and also found in Attachment 1 (Mitigation Monitoring and Reporting Program) in a final MND (termed hereafter as 'final MND').

Biological Resources and Mitigation Measures

Nesting Birds

CDFW appreciates the incorporation of MM Bio-Avian-1, which considers nesting bird pre-construction surveys. However, CDFW is concerned that MM Bio-Avian-1 considers the start of bird nesting season as February 1 when hummingbirds may nest year-round and some species of raptors (e.g. owls, hawks, etc.) may commence nesting activities in January. Thus, CDFW offers the following revisions to MM Bio-Avian-1 (edits are in ~~strikethrough~~ and **bold**):

Bio-Avian-1: Pre-construction Nesting Bird Survey.

All Project activities on-site shall be conducted outside of the nesting bird season (generally, raptor nesting season is January 1 through September 15; and passerine bird nesting season is February 1 through September 1) to the maximum extent feasible. If Project activities begin during the non-nesting season (non-nesting season is typically from September 16 through December 31), a pre-construction survey shall be performed by a qualified biologist to verify the absence of nesting birds. A qualified biologist shall conduct the pre-activity survey within the Project area (including access routes) and a 300-foot buffer surrounding the Project area, no more than two hours prior to initiating Project activities.

If project activities cannot avoid the nesting season, ~~generally regarded as Feb. 1—Sept 30,~~ then preconstruction nesting bird surveys must be conducted **within 3-days** prior ~~to~~ **of the start of Project activities** ~~construction~~ by a qualified biologist to locate and avoid nesting birds. **Pre-construction nesting bird surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts.** If an active avian nest **containing eggs or young** is located **during the pre-construction nesting bird surveys**, a no-construction buffer ~~may~~ **shall** be established, **marked on the ground**, and monitored by the qualified biologist ~~and/or monitored~~ until the young have fledged

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or the nest is no longer active. **Nest buffers are species-specific and shall be at least 100 feet for passerines and 300 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Established buffers shall remain on site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.**

Burrowing Owl (*Athene cunicularia*)

CDFW appreciates the incorporation of MM Bio-Avian-2, which considers burrowing owl pre-construction surveys. CDFW also appreciates that MM Bio-Avian-2 requires two pre-construction burrowing owl surveys: one survey within 14-30 days prior to start of Project activities and one survey 24 hours prior to start of Project activities.

Because CDFW exclusively recommends the 2012 Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012) for any project that is surveying and evaluating impacts to burrowing owls, and according to the 2012 Staff Report on Burrowing Owl Mitigation an initial take avoidance survey should be completed no less than 14 days prior to initiating ground disturbing activities, CDFW recommends MM Bio-Avian-2 be revised accordingly. In addition, since MM Bio-Avian-2 does not address implementing avoidance, minimization, and mitigation measures, if burrowing owl were to be found during pre-construction surveys, CDFW offers the following revisions to MM Bio-Avian-2 (edits are in ~~strikethrough~~ and **bold**):

Bio-Avian-2: Pre-construction Burrowing Owl Survey.

Two burrowing owl preconstruction surveys ~~must~~ **shall** be performed: one survey 14-~~30~~ days prior to project activities, and one survey 24 hours prior to project activities within and adjacent to suitable habitat areas (e.g. staging areas, fallow fields, annual grassland).

No less than 14 days and 24 hours prior to the initiation of any Project activities within suitable and adjacent suitable habitat, a qualified biologist shall conduct take avoidance surveys in accordance with the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012). If no burrowing owl(s) are observed onsite during the take avoidance survey, a letter shall be prepared by the qualified biologist documenting the results of the survey. The letter shall be submitted to the California Department of Fish and Wildlife (CDFW). If burrowing owl(s) are observed on site during the take avoidance survey, areas occupied by burrowing owls shall be avoided. If burrowing owls cannot be avoided by the

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Project, then the qualified biologist shall prepare and submit a passive relocation program in accordance with Appendix E (i.e., Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012) to CDFW for review/approval prior to the commencement of disturbance activities on site and propose mitigation at no less than a 2:1 ratio for permanent loss of occupied burrow(s) and habitat consistent with the 2012 Staff Report on Burrowing Owl Mitigation. Survey results shall be submitted to CDFW within 30 days of completion of surveys following the guidelines provided in Appendix D of the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012).

Bats

CDFW appreciates the incorporation of MM Bio-Bat-PSM-2, which consider pre-construction bat emergence surveys, and MM Bio-Bat-PSM-3, which considers phasing of tree removal in consideration of bat habitat and roosts. CDFW recommends minor revisions to MM Bio-Bat-PSM-2 and MM Bio-Bat-PSM-3 to specify the timing of bat emergence surveys and tree removal, respectively (edits are in ~~strikethrough~~ and **bold**):

Bio-Bat-PSM-2: Preconstruction Bat Emergence Surveys.

To avoid impacts to special-status and regulatory bat species, preconstruction bat **night-time** emergence surveys must be conducted fourteen (14) days prior to construction by a qualified bat biologist to locate and avoid roosting bats at the following locations: Lytle Creek Basin OH Bridge, Lytle Creek Channel Bridge, East Branch Lytle Creek Channel Bridge, Little League Drive OC Bridge, I-215 drainage facility near the Little League Drive OC. Surveys shall be conducted by a qualified bat biologist ~~under~~ **on a warm night when nighttime lows are no less than 45°F and during dry weather conditions** ~~appropriate weather conditions and moon phase~~. **Surveys should be conducted from approximately 15 minutes before sunset to 1 hour after sunset.** Project activities may proceed as planned if no evidence of bat occupation **(e.g., guano, urine staining, or vocalizations)** ~~of the~~ **at a given** structure is identified during the surveys and ~~the biologist determines that roosting bats are unlikely to be affected by the project activities slated to occur~~. Project activities at a given structure must begin within 14 days of the nighttime survey or the survey will need to be repeated. The project **qualified** bat biologist will identify the bats to the species level and evaluate the colony to determine its size and significance **and presence of a maternal colony**. ~~If~~ **if** evidence of bat occupation is identified during surveys, ~~the~~ **qualified bat** biologist ~~will~~ **shall** then provide additional measures to avoid impacts to roosting bats ~~and/or~~ as recommended by CDFW which may include replacing existing bat roosts with new roosting habitat in conjunction with a three (3) year monitoring period by a CDFW approved bat biologist. Measures provided ~~would~~ **shall** be specific to the individual roost ~~situation~~, species present, and proposed construction activities, and ~~may~~ **shall** include, but not be limited to the following: a) postponement of project

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activities **to outside of the bat maternity season (typically, maternity season is April 1 through August 31)** ~~within 300 feet of the roost must occur outside of the maternity season~~ if a maternity colony is identified to be occupying **the a given** structure, and b) monitoring of project activities by a qualified bat biologist. Project activities that do not produce noise or vibrations substantially higher than ambient conditions may be conducted ~~during~~ **if a non-maternal roosting colony is present** ~~the maternity season if necessary,~~ at the **qualified bat biologist's** discretion and/or ~~as if~~ recommended by CDFW. If the ~~biological monitor~~ **qualified bat biologist** determines that **non-maternal colony** roosting bats are disturbed by construction activities, construction activities in the vicinity shall cease immediately and additional avoidance measures (e.g., installation of a noise shroud or sound curtain) and/or ~~agency~~ coordination **with CDFW** shall be required before activities within the vicinity resume.

Bio-Bat-PSM-3: Tree Removal.

If impacts to trees are unavoidable the following steps ~~will~~ **shall** be required. Caltrans ~~will~~ **shall** identify specific trees to be modified or removed and notify the qualified bat biologist. The qualified bat biologist ~~will~~ **shall** assess the potential of each tree to house a maternity colony. If crevice and/or cavity features are present, summer night-time surveys ~~will~~ **shall** be conducted to determine if a maternity colony is present. If a maternity colony is present, tree removal and/or modification ~~must~~ **shall** occur **outside the bat maternity season (typically April 1 through August 31)** in the fall (after flightless young have become volant) and under the supervision of a ~~designated~~ **qualified** bat biologist. If no crevice and/or cavity features are present, the ~~designated~~ **qualified** bat biologist ~~will~~ **shall** supervise the **following** two-step process of tree removal **that shall occur over a 2-day period** to avoid direct mortality of foliage-roosting species-:

- (1) On Day 1, branches and limbs that do not contain crevices or cavities shall be removed using hand tools or chainsaws. The goal is to create a disturbance sufficient to cause any bats roosting in the tree to leave that night and not return, but not at a level of intensity that will cause bats to fly out of the tree during the disturbance itself (i.e., during the daytime, when leaving the roost will likely result in predation).**
- (2) On Day 2, the remainder of the tree may be removed.**

Special-status Small Mammals

The MND states that previous small mammal trapping efforts in RAFSS within the BSA yielded thirty-five (35) Los Angeles pocket mice (LAPM) in 2002, and nine (9) San Bernardino kangaroo rats (SBKR) in 2016. Please note that CDFW generally considers biological field assessments for wildlife to be valid for a one-year period. Because recent trapping was not conducted (per page 31) prior to the preparation of the MND,

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the level of impacts to SBKR and LAPM mouse cannot be disclosed. CDFW is concerned that without this information, the analysis in the MND is incomplete and the significance of these impacts cannot be determined, nor adequate mitigation identified, as required under CEQA. Although the MND proposes MM Bio-General-Project Specific Measure (PSM)-17 to avoid impacts to SBKR, MM Bio-General-Project Specific Measure (PSM)-17 only establishes a no-work exclusionary timeframe to avoid SBKR's active period and does not consider impacts from the Project on burrowing individuals of SBKR and LAPM or other special-status small mammals within the Project. Therefore, CDFW recommends that Caltrans adopts MM Bio-General-Project Specific Measure (PSM)-19 below (edits are in **bold** and ~~strikethrough~~):

Bio-General-Project Specific Measure (PSM)-19: Special-status Small Mammal Avoidance.

Caltrans shall provide to the California Department of Fish and Wildlife (CDFW) a set of avoidance and minimization measures aimed at avoiding special-status small mammals, including San Bernardino kangaroo rat (SBKR) and Los Angeles pocket mouse (LAPM) from Project-related impacts. The proposed avoidance and minimization measures shall be provided to CDFW for review and approval *no fewer than 30 days prior to the initiation of Project activities*. If complete avoidance of LAPM, SBKR, or any other special-status small mammal cannot be achieved, mitigation of no less than 2:1 will be required for LAPM and other non-state-listed special-status small mammals. If complete avoidance of state-listed SBKR cannot be achieved, a California Endangered Species Act (CESA) Incidental Take Permit (ITP) and mitigation at no less than a 5:1 (replacement to impact) ratio for loss of habitat is recommended. Project activities should not begin until a CESA ITP is obtained for SBKR.

RAFSS and Santa Ana Woolly Star

The MND identifies the presence of RAFSS within the BRA, specifically within Lytle Creek. In addition, the MND well recognizes that RAFSS is at "high risk of extinction or elimination" and has a "very threatened status" as a plant community with a state rank (S) of S1.1. The RAFSS habitat on the Project site is critical as refugia to special-status species (i.e., LAPM, SBKR). Thus, CDFW considers the removal of any RAFSS to be a significant impact, but the MND, states that the Project impact area would be confined to paved travel way with disturbed soils void of RAFSS and that Bio-Plant-1, Bio-General-7, and Bio-General-8 would be implemented to avoid impacts to RAFSS. In CDFW's review of the MND's Environmental Commitments Records, which describes the Project's avoidance, minimization, and/or mitigation measures, there is no Bio-Plant-1, and Bio-General-7 relates to a Workers Environmental Awareness Program (WEAP), while Bio-General-8 requires weekly biological monitoring to ensure mitigation measures are being implemented. CDFW does understand that the Project impact area

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is proposed to be confined to paved travel way with disturbed soils “void of RAFSS”, but CDFW does not feel comfortable with the lack of mitigation measures to avoid potential impacts to RAFSS, which includes Santa Ana River woolly star, a state endangered species. As such, CDFW recommends the adoption of MM Bio-Plant-1 below prior to finalizing the MND:

Bio-Plant-1: Special-status Plants.

Impacts to Riversidian alluvial fan sage scrub (RAFSS) and special-status plants, including state-listed Santa Ana River woolly star (SAWS), shall be avoided by establishing an appropriate avoidance buffer established by a California Department of Fish and Wildlife (CDFW)-approved botanist and marked in the field (i.e., fencing or flagging). If complete avoidance cannot be achieved, loss of RAFSS and special-status plants, including SAWS should be mitigated through the purchase of mitigation credits from a CDFW-approved bank, or by land acquisition and conservation at a minimum 3:1 (replacement-to-impact) ratio. Note that a higher ratio may be warranted if the proposed mitigation lands are located far from the Project site (i.e., within a separate watershed). If the Project has the potential to impact a state-listed plant species, such as SAWS, Caltrans should apply for a California Endangered Species Act Incidental Take Permit with CDFW.

Lake and Streambed Alteration

CDFW is not clear on the scope of the Project in terms of road upgrades and rehabilitation for overpasses over Fish and Game Code section 1602 resources; for example, Lytle Creek Basin, Cable Creek, and Lytle Creek Chanel/Cajon Wash. CDFW is concerned with potential indirect and direct impacts from the Project to Lytle Creek Basin, Cable Creek, and Lytle Creek Chanel/Cajon Wash. Thus, CDFW recommends that Caltrans adopts MM Bio-General-14 below to either obtain written correspondence from CDFW stating that notification under section 1602 of the Fish and Game Code is not required for the Project, *or*, if notification under section 1602 of the Fish and Game Code is required for the Project, to obtain a CDFW executed Lake and Streambed Alteration Agreement:

MM Bio-General-14: Lake and Streambed Alteration.

Prior to construction and issuance of any grading permit, the Project applicant should obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, *or* the Project applicant should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.

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Coast Live Oak

The Project will result in the removal of several native trees, including several mature coast live oaks. The MND proposes to minimize the loss of trees in kind at a 1:1 ratio, as described in MM VIS-1. CDFW appreciates the replacement of native trees, but is concerned with the lack of maintenance and monitoring (e.g., watering, nonnative cover) to ensure survival of replaced trees. Also, CDFW generally recommends mitigation for removal of native trees, such as coast live oaks at a minimum ratio of 10:1 (replacement to impact) ratio. Thus, CDFW recommends the below revisions to MM VIS-1 (edits are in **bold** and ~~strikethrough~~):

VIS-1: Tree Replacement.

Any removal of trees shall be ~~allocated~~ a **replacement** in kind with a minimum ratio of 10:1 with a 48-inch box **and maintained and monitored for five (5) years. At year 5, all trees shall have a 100 percent survival rate, nonnative invasive vegetation shall be no more 5 percent within a radius of 15 feet of plantings, and irrigation shall have been discontinued at least two years prior to completion of the maintenance/monitoring period.** ~~to achieve a comparable landscape to what was existing prior to construction. Upon further evaluation of the project by the district landscape architect during the design phase, this ratio may be adjusted.~~

Nesting Swallows

CDFW appreciates that the MND recognizes the potential for bats to roost within swallow nests, as recognized in MM Bio-General-Project Specific Measure (PSM)-18. CDFW recommends the below revisions to Bio-General-Project Specific Measure (PSM)-18 to protect bats *and* nesting swallows from Project related impacts (edits are in **bold** and ~~strikethrough~~):

Bio-General-Project Specific Measure (PSM)-18: Removal of Nests Prior to Nesting Season.

Weekly inspection of the project site for cliff swallow nest building activity shall begin by February 15. If cliff swallows (~~*Hirundo pyrrhonta*~~) begin colonizing the bridges prior to beginning bridge work, all nest precursors (mud placed by swallows for construction of nests) shall be washed down at least once daily until swallow's cease trying to construct nests. This activity shall not result in harm or death to ~~adult~~ swallows (**adult, juvenile, nestling or eggs**). If intact cliff swallow nests must be removed, they ~~should~~ **shall** be removed prior to nesting season, **when the nest is completely inactive (approximately September or October but shall be confirmed by a qualified bat biologist) (October 1 to January 31) and prior to potential use by overwintering bats** ~~under the direct supervision of a biologist with a Memorandum of Understanding from CDFW to handle bats, and in such a way that the nest is~~ **left in place and kept intact and not dropped to the ground until it can be** **and** inspected by the qualified bat

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biologist for eggs, hatchlings or juvenile swallows as well as bat occupation prior to removal, and under the direct supervision of a qualified bat biologist with a Memorandum of Understanding from CDFW to handle bats. If the nest is occupied by eggs, hatchlings, juvenile birds, or bats, the nests shall be left undisturbed until, either the birds have fledged, the nest is no longer active, or if bats are occupying, the bats have left for the season, as confirmed by a qualified bat biologist. If bats must be relocated outside of the breeding season, a Bat Avoidance and Minimization plan shall be submitted to CDFW for review and approval. A qualified bat biologist is required for removal of cliff-swallow nests due to documented occurrences of bat roosting behavior within swallow nests.

ENVIRONMENTAL DATA

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

CONCLUSION

CDFW requests that Caltrans include in the final MND the suggested mitigation measures (Attachment 1) offered by CDFW to avoid, minimize, and mitigate Project impacts on California fish and wildlife resources.

CDFW appreciates the opportunity to comment on the MND for the State Route 66 and Interstate 215 Roadway Rehabilitation and Pedestrian Project (SCH No.2022040328) and hopes our comments will assist the Caltrans in identifying, avoiding, minimizing, and mitigating Project impacts on fish and wildlife resources.

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If you should have any questions pertaining to the comments provided in this letter, please contact Corina Jimenez, Environmental Scientist at Corina.Jimenez@wildlife.ca.gov.

ATTACHMENTS

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

Sincerely,

DocuSigned by:

84FBB8273E4C480...

Alisa Ellsworth
Environmental Program Manager

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

REFERENCES

California Department of Fish and Game (CDFG). 2012. Staff report on burrowing owl mitigation. State of California, Natural Resources Agency. Available for download at: http://www.dfg.ca.gov/wildlife/nongame/survey_monitor.html

California Department of Fish and Wildlife. 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. Available for download at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>

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ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

PURPOSE OF THE MMRP

The purpose of the MMRP is to ensure compliance with mitigation measures during project implementation. Mitigation measures must be implemented within the time periods indicated in the table below.

TABLE OF MITIGATION MEASURES

The following items are identified for each mitigation measure: Mitigation Measure, Implementation Schedule, and Responsible Party. The Mitigation Measure column summarizes the mitigation requirements. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing the mitigation measure.

Mitigation Measures	Implementation Schedule	Responsible Party
<p>Bio-Avian-1: Pre-construction Nesting Bird Survey.</p> <p>All Project activities on-site shall be conducted outside of the nesting bird season (generally, raptor nesting season is January 1 through September 15; and passerine bird nesting season is February 1 through September 1) to the maximum extent feasible. If Project activities begin during the non-nesting season (non-nesting season is typically from September 16 through December 31), a pre-construction survey shall be performed by a qualified biologist to verify the absence of nesting birds. A qualified biologist shall conduct the pre-activity survey within the Project area (including access routes) and a 300- foot buffer surrounding the Project area, no more than two hours prior to initiating Project activities.</p>	<p>Prior to commencing Project activities</p>	<p>Project Proponent</p>

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<p>If project activities cannot avoid the nesting season, then preconstruction nesting bird surveys must be conducted within 3-days of the start of Project activities by a qualified biologist to locate and avoid nesting birds. Pre-construction nesting bird surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If an active avian nest containing eggs or young is located during the pre-construction nesting bird surveys, a no-construction buffer shall be established, marked on the ground, and monitored by the qualified biologist until the young have fledged or the nest is no longer active. Nest buffers are species-specific and shall be at least 100 feet for passerines and 300 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Established buffers shall remain on site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.</p>		
<p>Bio-Avian-2: Pre-construction Burrowing Owl Survey.</p> <p>Two burrowing owl preconstruction surveys shall be performed: one survey 14 days prior to project activities, and one survey 24 hours prior to project activities within and adjacent to suitable habitat areas (e.g.</p>	<p>Prior to commencing Project activities</p>	<p>Project Proponent</p>

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<p>staging areas, fallow fields, annual grassland).</p> <p>No less than 14 days and 24 hours prior to the initiation of any Project activities within suitable and adjacent suitable habitat, a qualified biologist shall conduct take avoidance surveys in accordance with the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012). If no burrowing owl(s) are observed on site during the take avoidance survey, a letter shall be prepared by the qualified biologist documenting the results of the survey. The letter shall be submitted to the California Department of Fish and Wildlife (CDFW). If burrowing owl(s) are observed on site during the take avoidance survey, areas occupied by burrowing owls shall be avoided. If burrowing owls cannot be avoided by the Project, then the qualified biologist shall prepare and submit a passive relocation program in accordance with Appendix E (i.e., Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012) to CDFW for review/approval prior to the commencement of disturbance activities on site and propose mitigation at no less than a 2:1 ratio for permanent loss of occupied burrow(s) and habitat consistent with the 2012 Staff Report on Burrowing Owl Mitigation. Survey results shall be submitted to CDFW within 30 days of completion of surveys following the guidelines provided in Appendix D of the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012).</p>		
<p>Bio-Bat-PSM-2: Preconstruction Bat Emergence Surveys.</p> <p>To avoid impacts to special-status and regulatory bat species, preconstruction bat</p>	<p>Prior to commencing Project activities</p>	<p>Project Proponent</p>

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<p>night-time emergence surveys must be conducted fourteen (14) days prior to construction by a qualified bat biologist to locate and avoid roosting bats at the following locations: Lytle Creek Basin OH Bridge, Lytle Creek Channel Bridge, East Branch Lytle Creek Channel Bridge, Little League Drive OC Bridge, I-215 drainage facility near the Little League Drive OC. Surveys shall be conducted by a qualified bat biologist on a warm night when nighttime lows are no less than 45°F and during dry weather conditions. Surveys should be conducted from approximately 15 minutes before sunset to 1 hour after sunset. Project activities may proceed as planned if no evidence of bat occupation (e.g., guano, urine staining, or vocalizations) at a given structure is identified during the surveys. Project activities at a given structure must begin within 14 days of the nighttime survey or the survey will need to be repeated. The project qualified bat biologist will identify the bats to the species level and evaluate the colony to determine, its size and significance, and presence of a maternal colony. If evidence of bat occupation is identified during surveys, the qualified bat biologist shall then provide additional measures to avoid impacts to roosting bats as recommended by CDFW which may include replacing existing bat roosts with new roosting habitat in conjunction with a three (3) year monitoring period by a CDFW approved bat biologist. Measures provided shall be specific to the individual roost species present, and proposed construction activities, and shall include, but not be limited to the following:</p> <ul style="list-style-type: none">a) postponement of project activities to outside of the bat maternity season (typically, maternity season is April 1 through August 31) if a maternity colony is identified to be occupying a given structure,		
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<p>and b) monitoring of project activities by a qualified bat biologist. Project activities that do not produce noise or vibrations substantially higher than ambient conditions may be conducted if a non-maternal roosting colony is present at the qualified bat biologist's discretion and if recommended by CDFW. If the qualified bat biologist determines that non-maternal colony roosting bats are disturbed by construction activities, construction activities in the vicinity shall cease immediately and additional avoidance measures (e.g., installation of a noise shroud or sound curtain) and coordination with CDFW shall be required before activities within the vicinity resume.</p>		
<p>Bio-Bat-PSM-3: Tree Removal.</p> <p>If impacts to trees are unavoidable the following steps shall be required. Caltrans shall identify specific trees to be modified or removed and notify the qualified bat biologist. The qualified bat biologist shall assess the potential of each tree to house a maternity colony. If crevice and/or cavity features are present, summer night-time surveys shall be conducted to determine if a maternity colony is present. If a maternity colony is present, tree removal and/or modification shall occur outside the bat maternity season (typically April 1 through August 31) in the fall (after flightless young have become volant) and under the supervision of a qualified bat biologist. If no crevice and/or cavity features are present, the qualified bat biologist shall supervise the following two-step process of tree removal that shall occur over a 2-day period to avoid direct mortality of foliage-roosting species:</p> <p>(1) On Day 1, branches and limbs that do not contain crevices or cavities</p>	<p>Prior to commencing Project activities</p>	<p>Project Proponent</p>

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<p>shall be removed using hand tools or chainsaws. The goal is to create a disturbance sufficient to cause any bats roosting in the tree to leave that night and not return, but not at a level of intensity that will cause bats to fly out of the tree during the disturbance itself (i.e., during the daytime, when leaving the roost will likely result in predation).</p> <p>(2) On Day 2, the remainder of the tree may be removed.</p>		
<p>Bio-General-Project Specific Measure (PSM)-19: Special-status Small Mammal Avoidance.</p> <p>Caltrans shall provide to the California Department of Fish and Wildlife (CDFW) a set of avoidance and minimization measures aimed at avoiding special-status small mammals, including San Bernardino kangaroo rat (SBKR) and Los Angeles pocket mouse (LAPM) from Project-related impacts. The proposed avoidance and minimization measures shall be provided to CDFW for review and approval <i>no fewer than 30 days prior to the initiation of Project activities</i>. If complete avoidance of LAPM, SBKR, or any other special-status small mammal cannot be achieved, mitigation of no less than 2:1 will be required for LAPM and other non-state-listed special-status small mammals. If complete avoidance of state-listed SBKR cannot be achieved, a California Endangered Species Act (CESA) Incidental Take Permit (ITP) and mitigation at no less than a 5:1 (replacement to impact) ratio for loss of habitat is recommended. Project activities</p>	<p>Prior to commencing Project activities</p>	<p>Project Proponent</p>

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<p>should not begin until a CESA ITP is obtained for SBKR.</p>		
<p>Bio-Plant-1: Special-status Plants.</p> <p>Impacts to Riversidian alluvial fan sage scrub (RAFSS) and special-status plants, including state-listed Santa Ana River woolly star (SAWS), shall be avoided by establishing an appropriate avoidance buffer established by a California Department of Fish and Wildlife (CDFW)-approved botanist and marked in the field (i.e., fencing or flagging). If complete avoidance cannot be achieved, loss of RAFSS and special-status plants, including SAWS should be mitigated through the purchase of mitigation credits from a CDFW-approved bank, or by land acquisition and conservation at a minimum 3:1 (replacement-to-impact) ratio. Note that a higher ratio may be warranted if the proposed mitigation lands are located far from the Project site (i.e., within a separate watershed). If the Project has the potential to impact a state-listed plant species, such as SAWS, Caltrans should apply for a California Endangered Species Act Incidental Take Permit with CDFW.</p>	<p>Prior to commencing Project activities</p>	<p>Project Proponent</p>
<p>MM Bio-General-14: Lake and Streambed Alteration.</p> <p>Prior to construction and issuance of any grading permit, the Project applicant should obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, <i>or</i> the Project applicant should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts</p>	<p>Prior to commencing Project activities</p>	<p>Project Proponent</p>

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<p>to Fish and Game Code section 1602 resources associated with the Project.</p>		
<p>VIS-1: Tree Replacement.</p> <p>Any removal of trees shall be replaced in kind with a minimum ratio of 10:1 with a 48-inch box and maintained and monitored for five (5) years. At year 5, all trees shall have a 100 percent survival rate, nonnative invasive vegetation shall be no more 5 percent within a radius of 15 feet of plantings, and irrigation shall have been discontinued at least two years prior to completion of the maintenance/monitoring period.</p>	<p>Prior to commencing Project activities</p>	<p>Project Proponent</p>
<p>Bio-General-Project Specific Measure (PSM)-18: Removal of Nests Prior to Nesting Season.</p> <p>Weekly inspection of the project site for swallow nest building activity shall begin by February 15. If swallows begin colonizing the bridges prior to beginning bridge work, all nest precursors (mud placed by swallows for construction of nests) shall be washed down at least once daily until swallow's cease trying to construct nests. This activity shall not result in harm or death to swallows (adult, juvenile, nestling or eggs). If intact swallow nests must be removed, they shall be removed prior to nesting season, when the nest is completely inactive (approximately September or October but shall be confirmed by a qualified bat biologist) and prior to potential use by overwintering bats, and in such a way that the nest is left in place and kept intact and not dropped to the ground and inspected by the qualified bat biologist for eggs, hatchlings or juvenile swallows as well as bat occupation prior to removal, and under the direct supervision of a qualified bat</p>	<p>Prior to commencing Project activities</p>	<p>Project Proponent</p>

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<p>biologist with a Memorandum of Understanding from CDFW to handle bats. If the nest is occupied by eggs, hatchlings, juvenile birds, or bats, the nests shall be left undisturbed until, either the birds have fledged, the nest is no longer active, or if bats are occupying, the bats have left for the season, as confirmed by a qualified bat biologist. If bats must be relocated outside of the breeding season, a Bat Avoidance and Minimization plan shall be submitted to CDFW for review and approval. A qualified bat biologist is required for removal of swallow nests due to documented occurrences of bat roosting behavior within swallow nests.</p>		
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