



DEPARTMENT OF FISH AND WILDLIFE

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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



May 18, 2022

Trais Norris
California Department of Transportation, District 6
2015 East Shields Ave
Fresno, California 93726

**Subject: State Route 33 Pavement Rehabilitation (Project)
Initial Study with proposed Negative Declaration
State Clearinghouse No. 2022040354**



Dear Mr. Norris:

The California Department of Fish and Wildlife (CDFW) received a proposed Negative Declaration (ND) and its supporting Initial Study (IS) prepared by the California Department of Transportation (Caltrans) for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish and G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

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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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 several rehabilitative improvements to segments of State Route (SR) 33, Elm Street, and 5th Street within the City of Coalinga in Fresno County. These improvements within the Project limits include, but are not limited to, re-pavement of the roadway surfaces along the length of the Project; rebuilding curb ramps to meet current ADA guidelines; rebuilding curbs, gutters, and drainage facilities; repairing existing, damaged sidewalks; replacing existing Type A dike with Type E dike; and removing existing approach/departure guardrails.

Location: Along various Locations which will be rehabilitated along SR 33, 5th Street, and Elm Avenue within of the City of Coalinga in Tulare 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 ND indicates that there would not be any Project-related impacts to Biological Resources. As currently drafted, it is unclear how Caltrans came to the conclusion that there will be no impacts to State listed species CDFW considers potentially present in the vicinity of the Project. CDFW does not agree with these conclusions and herein suggests measures to survey for and avoid Project-related impacts to these species, thereby reducing to less-than-significant Project-related impacts. CDFW also recommends a path forward for Caltrans in the event avoidance of the two species is not feasible.

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

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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 disturbance and the staging and laydown of equipment and materials along the Project. 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 potentially resulting in abandoned pups during the pupping season. The Initial Study does not address the potential for SJKF within the vicinity of the Project. Caltrans does not propose avoidance and minimization efforts should SJKF be found near the Project.

Specific Impacts: Without appropriate avoidance and minimization measures for SJKF, potential significant impacts associated with Project related activities include, den collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of young, and direct mortality of individuals.

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 impacts 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 include SJKF avoidance and minimization measures be included as part of the CEQA document prepared for this Project. Further, CDFW recommends these measures be made conditions of Project approval.

Recommended Mitigation Measure 1: SJKF Surveys

CDFW recommends assessing presence/absence of SJKF by conducting surveys following the USFWS' "Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance" (2011). Specifically, CDFW advises conducting these surveys in all areas of potentially suitable habitat no less than 14-days and no more than 30-days prior to beginning of ground and/or vegetation disturbing activities.

Recommended Mitigation Measure 2: SJKF Avoidance

CDFW recommends implementing no-disturbance buffers, as described in the USFWS "Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance" (2011) around den sites.

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Recommended Mitigation Measure 3: SJKF Take Authorization

SJKF detection warrants consultation with CDFW to discuss how to avoid take or, if avoidance is not feasible, to acquire an Incidental Take Permit (ITP) prior to ground-disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

COMMENT 2: Swainson's Hawk (SWHA)

Issue: SWHA have been documented in the Project vicinity. The Project activities will involve varying degrees of ground disturbance within the right-of-way, CDFW considers it possible that the Project-related activities would represent a novel stimulus which could result in nest abandonment if they occur within ½-mile of an active SWHA nest. Adoption of the ND as it is written will allow activities that will involve disturbance, and grading, employing heavy equipment and work crews within 500 feet of active SWHA nests. Nest abandonment resulting from Project-related activities is significant impact to SWHA as well as potentially resulting in take, as it is defined in section 86 of Fish and Game Code. Caltrans does not propose avoidance and minimization efforts should SWHA or their nests be detected in the Project area.

Specific Impacts: Without appropriate avoidance and minimization measures for SWHA, potential significant impacts that may result from Project activities include: nest abandonment, loss of nest trees, loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), and direct mortality. All trees, including non-native or ornamental varieties, near the Project site may provide potential nesting sites.

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). If potential nest site occur in the Project vicinity, approval of the Project may lead to subsequent ground-disturbing activities that involve noise, groundwork, construction of structures, and movement of workers that could affect nests and has the potential to result in nest abandonment and/or loss of foraging habitat, significantly impacting local nesting SWHA.

Recommended Potentially Feasible Avoidance and Mitigation Measure(s) Because the Project-related activities represent novel stimuli and threaten nest abandonment, CDFW recommends the following edits to include SWHA avoidance and minimization measures in the CESA document prepared for the Project. Further, CDFW recommends these measures be made conditions of Project approval.

Recommended Mitigation Measure 4: Focused SWHA Surveys

To evaluate potential Project-related impacts, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting SWHA following the entire survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC

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2000) prior to Project implementation (during CEQA analysis). SWHA detection during protocol-level surveys warrants consultation with CDFW to discuss how to implement Project activities and avoid take.

Recommended Mitigation Measure 5: SWHA Avoidance

CDFW recommends that if Project-specific activities will take place during the SWHA nesting season (i.e., March 1 through September 15), and active SWHA nests are present, a minimum ½-mile no-disturbance buffer be delineated and maintained around each nest, regardless if when it was detected by surveys or incidentally, until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival, to prevent nest abandonment and other take of SWHA as a result of Project activities.

Recommended Mitigation Measure 6: SWHA Take Authorization

CDFW recommends that in the event an active SWHA nest is detected, and a ½-mile no-disturbance buffer is not feasible, consultation with CDFW is warranted to discuss how to implement the project and avoid take. If take cannot be avoided, take authorization through the issuance of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081(b) is necessary to comply with CESA.

Recommended Mitigation Measure 7: SWHA Tree Removal

CDFW recommends that the removal of known SWHA nest trees, even outside of the nesting season, be replaced with an appropriate native tree species planting at a ratio of 3:1 at or near the Project area or in another area that will be protected in perpetuity. This mitigation would offset the local and temporal impacts of nesting habitat loss.

II. Editorial Comments and/or Suggestions

Appropriateness of ND: In summary, the above recommended revisions to the IS pertain to avoidance of SJKF and their dens, and nesting SWHA. If surveys confirm the presence of any of the aforementioned species at or within the species specific buffers, Caltrans may not be able to avoid impacts to these species nor accomplish the Project without first obtaining incidental take authorization pursuant to section 2081(b) of Fish and Game Code. Incidental take authorization would require minimization of, and mitigation for, take of the permitted species. CDFW recommends Caltrans incorporate the recommended revisions to the IS and propose an MND for the Project, in lieu of the currently proposed ND.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any

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bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

CDFW encourages Project implementation to occur during the bird non-nesting season; however, if Project activities must occur during the breeding season (i.e., February through mid-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted by the Project are detected. CDFW also recommends that surveys cover a sufficient area around the work site to identify nests and determine their status. A sufficient area means any area potentially affected by a project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends that a qualified biologist continuously monitor nests to detect behavioral changes resulting from the project. If behavioral changes occur, CDFW recommends that the work causing that change cease and CDFW be consulted for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to CNDDDB. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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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:



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Valerie Cook

Acting Regional Manager

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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LITERATURE CITED

- CDFW. 2016. Five Year Status Review for Swainson's Hawk (*Buteo swainsoni*). California Department of Fish and Wildlife. April 11, 2016.
- 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.

Attachment 1

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

PROJECT: State Route 33 Pavement Rehabilitation Project

SCH No.: 2022040354

RECOMMENDED MITIGATION MEASURE	STATUS/ DATE/ INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: SJKF Surveys	
Mitigation Measure 3: SJKF Take Authorization if Avoidance is not feasible	
Mitigation Measure 4: SWHA Surveys	
Mitigation Measure 6: SWHA Take Authorization if Avoidance not feasible	
<i>During Construction</i>	
Mitigation Measure 2: SJKF Avoidance	
Mitigation Measure 5: SWHA Avoidance	
Mitigation Measure 7: SWHA Nest Tree Replacement (if applicable)	