



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



May 17, 2022

Jason Wilkinson
California Department of Transportation, District 6
50 Higuera Street
San Luis Obispo, California 93401

**Subject: King City Capital Preventative Maintenance (Project)
Initial Study with proposed Mitigated Negative Declaration
State Clearinghouse No. 2022040410**

Dear Mr. Wilkinson:

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

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

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

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

PROJECT DESCRIPTION SUMMARY

Proponent: Caltrans

Objective: Caltrans proposes several capital preventative maintenance activities along State Route (SR) 101 between post miles R41.9 and R49.8, near the city of King City in Monterey County. These improvements within the Project limits include, but are not limited to, cold planning and re-pavement of the roadway surfaces along the length of the Project; the addition of streetlights; pavement improvements to the weigh-in station in Greenfield; and the replacement of three culvert systems.

Location: At various Locations which will be rehabilitated along SR 101 between post miles R41.9 and R49.8 near the City of King City in Monterey 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.

San Joaquin Kit Fox: Currently, the proposed IS/MND indicates that the Project-related impacts to Biological Resources would be less-than-significant with implementation of specific avoidance and minimization efforts. In particular, Caltrans concludes there will be less-than-significant impacts to the State threatened San Joaquin kit fox (*Vulpes macrotis mutica*, SJKF).

However; as currently drafted, it is unclear whether the measures proposed in the IS/MND sufficiently reduce to less-than-significant the potential Project-related impacts

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to SJKF. Therefore, CDFW does not agree with these conclusions and will herein suggest measures to survey for and avoid Project-related impacts to the species, thereby reducing to less-than-significant the Project-related impacts. CDFW also recommends that Caltrans identify a path forward in the event that avoidance of SJKF is not feasible.

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. Caltrans currently proposes pre-activity clearance surveys of the Project footprint between 14 and 30 days of commencing project activities, consultation with the USFWS if a natal den is discovered within a 200-foot buffer, daily inspection of deep trenches and steep-walled holes within the Project footprint, and the inspection of pipes greater than 4 inches in diameter prior to burying, capping, or moving in any way. These surveys may not be adequate to accurately detect SJKF and identify potential habitat features. Further, while Caltrans proposes consulting with USFWS in the event individual SJKF are detected during these surveys and/or inspections, CDFW is concerned that Caltrans does not propose consulting with CDFW. As stated above, SJKF is listed as threatened pursuant to CESA and any detections of SJKF during Project activities necessitates consultation with CDFW. Furthermore, any Project activities that result in take of SJKF will require take authorization pursuant to Section 2081(b) of Fish and Game Code.

CDFW recommends these inspections should occur on pipes and materials 3 inches in diameter or greater. CDFW recommends a 500-foot no disturbance buffer around natal dens, a 100-foot no disturbance buffer around known dens, and a 50-foot no-disturbance buffer around potential or atypical dens. If the aforementioned buffers are not feasible, consultation with CDFW is warranted to determine if the Project can avoid take of SJKF. If take cannot be avoided, take authorization through acquisition of an Incidental Take Permit, pursuant to Section 2081(b) of Fish and Game Code, is necessary to comply with CESA.

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 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

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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:

96D42C58E092466...
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: King City Capital Preventative Maintenance Project

SCH No.: 2022040410

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	
<i>During Construction</i>	
Mitigation Measure 2: SJKF Avoidance	