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June 8, 2022

Smita Deshpande
 California Department of Transportation
 Division of Environmental Analysis
 1750 East Fourth Street, Suite 100
 Santa Ana, CA 92705
I-5ManagedLanesProject@dot.ca.gov

Subject : I-5 Managed Lanes Project

Dear Ms. Deshpande:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) from the California Department of Transportation (Caltrans) for the 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 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 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.

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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PROJECT DESCRIPTION SUMMARY

Proponent: California Department of Transportation (Caltrans)

Objective: The Project Proponent intends to improve managed lanes in both directions on Interstate 5 (I-5) from Red Hill Avenue to 0.5 mile north of the Orange County and Los Angeles (OC/LA) County line. To meet this goal, the Project Proponent proposes to modify the existing High Occupancy Vehicle (HOV) lanes within the Project limits to address capacity and operational deficiencies. The Project Proponent presents several alternatives, including three Build Alternatives and one No Build Alternative (Alternative 1). Alternative 2 changes existing HOV minimum occupancy requirements from the existing two-plus to three-plus passengers between Red Hill Avenue and the OC/LA County line. Alternative 3 converts existing HOV lanes to Express Lanes between Red Hill Avenue and the OC/LA County line. Alternative 4A converts the existing HOV lanes to Express Lanes and constructs an additional Express Lane between State Route 57 (SR-57) and State Route 91. Alternative 4B converts the existing HOV lanes to Express Lanes and constructs an additional Express Lane between SR-57 and the OC/LA County line.

Location: The Project site is in Orange County on I-5 from Red Hill Avenue north to the OC/LA County line and 0.5 mile north from there to the City of Mirada. The Project passes through the cities of Tustin, Santa Ana, Orange, Anaheim, Fullerton, and Buena Park.

Biological Setting: Although most of the area within the Project limits is heavily developed, the Project may impact some parks and other small areas of open space exist, particularly along Santiago Creek. Additionally, it appears, based on the limited Project details provided in the NOP, that at a minimum, Alternatives 4A and 4B would likely impact multiple stream crossings. Stream crossings include, from north to south, Coyote Creek, Fullerton Creek, Carbon Creek, Santa Ana River, and Santiago Creek. Fullerton, Carbon, and Coyote Creeks are tributaries to the San Gabriel River, although Carbon Creek also connects to the Santa Ana River. The Santa Ana River and some of its tributaries, including Santiago Creek, historically supported California Endangered Species Act (CESA) candidate species Southern California steelhead (*Oncorhynchus mykiss*; southern steelhead).

Additionally, although the Project area appears to be almost completely developed, special status species documented in the California Natural Diversity Database² (CNDDB) that overlay the Project limits, and documented as extant or possibly extirpated, include State Species of Special Concern (SSC) western mastiff bat (*Eumops perotis californicus*), SSC Mexican long-tongued bat (*Choeronycteris mexicana*), SSC southern California legless lizard (*Anniella stebbinsi*), SSC coast horned lizard (*Phrynosoma blainvillii*), State Fully Protected Species California black rail (*Laterallus jamaicensis coturniculus*), CESA-listed threatened Swainson's hawk (*Buteo swainsoni*), and California Rare Plant Rank 1B.1 Parish's brittle scale (*Atriplex parishii*).

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Lead Agency in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect

² California Department of Fish and Wildlife. (2020). California Natural Diversity Database (CNDDB) – Government version [ds45] dated November 1, 2020. Retrieved November 18, 2020, from <https://apps.wildlife.ca.gov/bios/>.

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impacts on fish and wildlife (biological) resources. Based on the potential for the Project to have a significant impact on biological resources, CDFW agrees that a DEIR is appropriate for the Project.

Specific Comments

1. Southern Steelhead and Fish Passage. The Project limits include crossings over the Santa Ana River and Santiago Creek, which meets the Santa Ana River approximately one stream mile west of the I-5 crossing. The Santa Ana River and Santiago Creek are historical southern steelhead streams (Becker and Reining 2008). The Project area also includes crossings at Carbon Creek, Fullerton Creek, and Coyote Creek.

According to California Streets and Highways Code section 156.3, if a Project affects a crossing on a stream where anadromous fish are, or historically were found, Caltrans must complete an assessment of potential barriers to fish passage prior to initiating Project design. Caltrans must also submit the assessment to CDFW. Furthermore, if a structural barrier exists, Caltrans shall include remediation of the barrier in the design plans and Caltrans shall develop the Project in consultation with CDFW. Additionally, Fish and Game Code section 5901 prohibits the construction or maintenance of any structure that prevents or impedes fish passage, pursuant to the Fish and Game code definition of "fish."

The CDFW Passage Assessment Database (PAD) indicates a lack of data for the I-5 Santiago Creek crossing. The PAD also indicates that all other Project-related crossings require a detailed survey to determine potential passage constraints. Therefore, CDFW recommends that the Project Proponent implement Fish and Game Code 5901 and the Streets and Highways Code requirements 156 through 156.5 and work closely with CDFW throughout the Project design to ensure compliance with fish passage requirements. CDFW also recommends that the Project Proponent consult with CDFW and the National Oceanic and Atmospheric Administration when considering the biological applicability of fish passage within the Project area. If any other crossings not mentioned here lie within the Project limits and may be affected by any of the proposed Alternatives, the above recommendations shall also apply to those streams.

2. Potential Impacts to Bats. A review of the California Natural Diversity Database indicates historic presence of SSC bat species within one mile of Buena Park and Tustin. As discussed in *Caltrans Bat Mitigation: A Guide to Developing Feasible and Effective Solutions* (Johnston et al., 2019), bridges, culverts, and other transportation infrastructure components can provide habitat for multiple bat species. Additionally, bats may roost in trees, especially in riparian habitat and on rocky banks. Since this Project includes crossings over multiple streams, including but not limited to, Santiago Creek, Santa Ana River, Carbon Creek, Fullerton Creek, and Coyote Creek, bats may roost within or near the Project footprint.

Additionally, CDFW considers bats non-game mammals, afforded protection by State law from take or harassment (Fish and Game Code § 4150, California Code of Regulations § 251.1). The DEIR should include a bat roosting habitat assessment. If habitat is present the DEIR should include survey results conducted in the bat maternity season (April 1 through August 31); a thorough discussion of potential impacts to bats from construction and operation of the Project to adequately disclose potential impacts; and appropriate avoidance and mitigation measures. The DEIR should include measures to avoid and minimize impacts to bat species. (CEQA Guidelines §15126.4[a][1]).

3. Historically Documented Species within the Vicinity. The CNDDDB documents historic presence of multiple species within the Project vicinity.

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- a. Wildlife Species. Fully Protected California Black Rail in 1896, likely in the Santa Ana River or Santiago Creek, CESA-listed threatened Swainson's hawk in 1888 in the vicinity of Anaheim, SSC southern California legless lizard in 1916 in the vicinity of Anaheim, and SSC coast horned lizard in 1922 in the vicinity of Santa Ana. It is possible that subsequent development resulted in extirpation of these species within the Project area; however, the DEIR should include an analysis of habitat suitability for all species. If suitable habitat exists and the Project may impact the habitat, the DEIR should include the location(s) and description(s) of the habitat and consider the likelihood that species may utilize the habitat. Additionally, if species presence is likely, the Project Proponent should conduct seasonally appropriate surveys and include the survey report(s) in the DEIR. The DEIR should discuss potential direct, indirect, and cumulative impacts to the species as well as proposed avoidance and mitigation measures.
 - b. Plant Species. The CNDDDB also documents the presence of California Rare Plant Rank 1B.1 Parish's brittlescale within one mile of Buena Park, detected in 1881 and presumed extant. Although this is a historical detection, the DEIR should include an analysis of habitat suitability for the species. If suitable habitat is present and the Project may impact the habitat, the DEIR should include the location(s) and description of the habitat and consider the likelihood that the species may be present. Additionally, if species presence is likely, the Project Proponent should conduct a seasonally appropriate surveys and include the survey report(s) in the DEIR. The DEIR should discuss potential direct, indirect, and cumulative impacts to the species as well as proposed avoidance and mitigation measures.
4. Fish and Game Code Section 1600 et seq. As discussed above, the Project area includes stream crossings. As a Responsible Agency under CEQA, CDFW has authority over activities in streams and/or lakes that will divert or obstruct the natural flow, or change the bed, channel, or bank (including vegetation associated with the stream or lake) of a river or stream or use material from a streambed. For any such activities, the Project Proponent (or "entity") must provide written notification to CDFW pursuant to Fish and Game Code Section 1600 et seq.
- a. CDFW's issuance of a Lake or Streambed Alteration Agreement (LSA) for a Project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. As a Responsible Agency, CDFW may consider the Environmental Impact Report of the local jurisdiction (Lead Agency) for the Project. To minimize additional requirements by CDFW pursuant to section 1600 et seq. and/or under CEQA, the DEIR should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for issuance of the LSA.
 - b. In the event the Project area may support aquatic, riparian, and wetland habitats, a preliminary delineation of the streams and the DEIR associated riparian habitats should be included in the DEIR. The delineation should be conducted pursuant to the U.S. Fish and Wildlife Service (FWS) wetland definition adopted by CDFW (Cowardin et al. 1970). Be advised that some wetland and riparian habitats subject to CDFW's authority may extend beyond the jurisdictional limits of the U.S. Army Corps of Engineers' Section 404 permit and the Regional Water Quality Control Board Section 401 Certification.
 - c. In Project areas which may support ephemeral or episodic streams, herbaceous vegetation, woody vegetation, and woodlands also serve to protect the integrity of these resources and help maintain natural sedimentation processes. Therefore, CDFW recommends effective setbacks be established to maintain appropriately sized vegetated buffer areas adjoining ephemeral drainages.

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- d. The Project Proponent should include and evaluate in the DEIR Project-related changes in upstream and downstream drainage patterns, runoff, and sedimentation.
 - e. As part of the LSA Notification process, CDFW requests a hydrological evaluation of the 100, 50, 25, 10, 5, and 2-year frequency storm event for existing and proposed conditions. CDFW recommends the DEIR evaluate the results and address avoidance, minimization, and/or mitigation measures that may be necessary to reduce potential significant impacts.
5. Early Coordination with CDFW. According to the Caltrans-CDFW Interagency Agreement (Caltrans Contract; Contract Number 43A0398) Exhibit A, section 15.H, Caltrans is obligated to “Work closely with CDFW...to make optimal use of available staff resources. This includes consultation prior to commencement of design, prior to 30% design, and again prior to 60% design level.” CDFW encourages the Project Proponent to maintain their commitment to this obligation, especially where a selected Project Alternative results in the need for a Lake and Streambed Alteration Agreement or may affect a sensitive species.

General Comments

6. Impact Areas and Project Alternatives. The NOP includes a brief discussion of the Project but does not provide sufficient detail to conduct a comprehensive analysis of the potential impacts. To enable CDFW to adequately review and comment on the Project from the standpoint of the protection of plants, fish, and wildlife, CDFW recommends the following information be included in the DEIR:
- a. A complete discussion of the purpose and need for, and description of, the Project, including all staging areas and access routes to the construction and staging areas; and,
 - b. A range of feasible alternatives should be included to ensure that alternatives to the Project are fully considered and evaluated; the alternatives should avoid or otherwise minimize impacts to sensitive biological resources.
7. Biological Baseline Assessment. The NOP does not provide a full assessment of the flora and fauna within the Project’s area of potential effect. The DEIR should provide a complete assessment of the flora and fauna within and adjacent to the Project area, with particular emphasis upon identifying endangered, threatened, sensitive, and locally unique species and sensitive habitats. This should include a complete floral and faunal species compendium of the entire Project site, undertaken at the appropriate time of year. The DEIR should include the following information:
- a. CEQA Guidelines, section 15125(c), specifies that knowledge of the regional setting is critical to an assessment of environmental impacts and that special emphasis should be placed on resources that are rare or unique to the region;
 - b. A current inventory of the biological resources associated with each habitat type on-site and within the area of potential effect. CDFW’s CNDDDB in Sacramento should be contacted at <https://www.wildlife.ca.gov/Data/BIOS> to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code;
 - c. An inventory of rare, threatened, endangered and other sensitive species on-site and within the area of potential effect. Species to be addressed should include all those which meet the CEQA definition (see CEQA Guidelines, § 15380). This should include sensitive fish, wildlife,

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reptile, and amphibian species. Seasonal variations in use of the Project area should also be addressed. Focused species-specific surveys, conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service;

- d. A thorough, recent, floristic-based assessment of special status plants and natural communities, following CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (see <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>);
 - e. Floristic, alliance- and/or association-based mapping and vegetation impact assessments conducted at the Project site and within the neighboring vicinity. *A Manual of California Vegetation*, second edition³, should also be used to inform this mapping and assessment. Adjoining habitat areas should be included in this assessment where site activities could lead to direct or indirect impacts off-site. Habitat mapping at the alliance level will help establish baseline vegetation conditions.
8. **Cumulative Impact Analysis.** The NOP does not provide a thorough discussion of direct, indirect, and cumulative impacts expected to adversely affect biological resources. To enable CDFW to adequately review and comment on the Project's potential impacts on biological resources, the DEIR should include a detailed discussion of potential impacts and specific measures to offset such impacts. The following should be addressed in the DEIR:
- a. A discussion of potential adverse impacts from lighting, noise, exotic species, and human activity should also be included. Mitigation measures proposed to alleviate such impacts should be included;
 - b. Discussions regarding indirect Project impacts on biological resources, including resources in nearby public lands, open space, adjacent natural habitats, riparian ecosystems, and any designated and/or proposed or existing reserve lands (e.g., preserve lands associated with a NCCP). Impacts on, and maintenance of, wildlife corridor/movement areas, including access to undisturbed habitats in adjacent areas, should be fully evaluated in the DEIR;
 - c. A cumulative effects analysis should be developed as described under CEQA Guidelines, section 15130. General and specific plans, as well as past, present, and anticipated future Projects, should be analyzed relative to the DEIR impacts on similar wildlife habitats;
 - d. To avoid impacts to nesting birds, the DEIR should require that, when biologically warranted, construction would occur outside of the peak avian breeding season which generally runs from February 1 through September 1 (as early as January 1 for some raptors). If Project construction is necessary during the bird breeding season, a qualified biologist with experience in conducting bird breeding surveys should conduct weekly bird surveys for nesting birds, within three days prior to the work in the area, and ensure no nesting birds in the Project area would be impacted by the Project. If an active nest is identified, a buffer shall be established between the construction activities and the nest so that nesting activities are not interrupted. CDFW recommends the buffer be a minimum width of 100 feet for common passerines, 300 feet from any state or federal listed species, and 500 feet for

³ Sawyer, J. O., Keeler-Wolf, T., and Evens J.M. 2008. *A manual of California Vegetation*, 2nd ed. ISBN 978-0-943460-49-9.

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raptors or State fully Protected species; be delineated by temporary fencing; and remain in effect as long as construction is occurring or until the nest is no longer active. No Project construction shall occur within the fenced nest zone until the young have fledged, are no longer being fed by the parents, have left the nest, and will no longer be impacted by the Project. Reductions in the nest buffer distance may be appropriate depending on the avian species involved, ambient levels of human activity, screening vegetation, or possibly other factors;

- e. The DEIR should include mitigation measures for adverse Project-related impacts to sensitive plants, animals, and habitats. Mitigation measures should emphasize avoidance and reduction of Project impacts. For unavoidable impacts, on-site habitat restoration or enhancement should be discussed in detail. If on-site mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, off-site mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed. Areas proposed as mitigation lands should be protected in perpetuity with a conservation easement, financial assurance and dedicated to a qualified entity for long-term management and monitoring. Under Government Code section 65967, the Lead Agency must exercise due diligence in reviewing the qualifications of a governmental entity, special district, or nonprofit organization to effectively manage and steward land, water, or natural resources on mitigation lands it approves and;
- f. CDFW generally does not support the use of relocation, salvage, and/or transplantation as mitigation for impacts to rare, threatened, or endangered species. Studies have shown that these efforts are experimental in nature and largely unsuccessful.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base 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 CNDDDB. The CNDDDB field survey form can be found at the following link: <https://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://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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 appreciates the opportunity to comment on the NOP of a DEIR to assist the Lead Agency in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Simona Altman, Senior Environmental Scientist, at (805) 338-0474 or Simona.Altman@wildlife.ca.gov.

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Sincerely,

DocuSigned by:

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References

Becker, G.S. and I.J. Reining. 2008. Steelhead/rainbow trout (*Oncorhynchus mykiss*) resources south of the Golden Gate, California. Cartography by D.A. Asbury. Center for Ecosystem Management and Restoration. Oakland, CA.

California Department of Fish and Wildlife, Passage Assessment Database, December 2021.

Cowardin, Lewis M., et al. 1970. Classification of Wetlands and Deepwater Habitats of the United States. U.S. Department of the Interior, FWS.

Johnston, Dave S., Kim Briones, and Christopher Pincetich. 2019. California Bat Mitigation: A Guide to Developing Feasible and Effective Solutions. H. T. Harvey & Associates, Los Gatos, CA. Prepared for the California Department of Transportation, Office of Biological Studies, Sacramento, CA. Task Order 7, Agreement No.43A0355.