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**GAVIN NEWSOM, Governor**  
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September 23, 2022

Governor's Office of Planning & Research

**Sep 26 2022**

**STATE CLEARINGHOUSE**

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**Subject: North Nojoqui Grade Capital Preventative Maintenance and Drainage Project; Mitigated Negative Declaration; SCH #2022080386**

Dear Ms. Bertaina:

The California Department of Fish and Wildlife (CDFW) has reviewed the Initial Study/Mitigated Negative Declaration (MND) from the California Department of Transportation (Caltrans) for the North Nojoqui Grade Capital Preventative Maintenance and Drainage Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup> In addition, CDFW has reviewed the MND's supplemental documents, which includes a Natural Environmental Study (NES).

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 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

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<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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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.

## PROJECT DESCRIPTION SUMMARY

**Objective:** To preserve and extend the service life of 14.41 miles of U.S Route 101, Caltrans proposes to rehabilitate existing pavement, update traffic safety systems, restore five culverts, and repair 500 feet of failing slope. Pavement rehabilitation includes cold-planing existing pavement, placing an asphalt overlay, replacing dikes, and replacing pavement markings. Night work may occur for paving and striping work. Updating traffic safety system includes reconstructing guardrails, upgrading guardrail connections to bridge railings, and adding shale for vegetation control between pavement and guardrail hinge points. The Project also proposes to repair five culverts as described in the table below.

Culvert Number	Post Mile	Description	Proposed Action
1	52.38	The 6-foot diameter corrugated steel pipe transitions to a 30-foot long, 6x6 concrete box totaling 229 feet in length. The last 20 feet of culvert is misaligned. Sediment has accumulated at the inlet and the outlet.	A 20-foot segment of steel pipe at the outlet will be replaced along with the outlet headwall. Cracks within the concrete will be sealed. The channel will be regraded at inlet and outlet.
2	52.62	The 78-foot long 18-inch diameter concrete pipe does not have enough capacity. Sediment has accumulated at its outlet.	The 18-inch diameter culvert will be replaced with a 24-inch diameter reinforced concrete pipe using cut and cover method. A flare end section at outlet will be installed and the outlet graded.
3	52.92	Under the northbound lanes, there is a 101-foot long 8x8 foot box culvert. Under the southbound lanes, there is a 208-foot long, 8-inch diameter concrete circular pipe.	Repairs to the culvert will include paving the invert, replacing a riser and repairing a damaged joint. Sediment that has accumulated in the pipe will be cleared and the channel up and downstream will be graded to prevent future sedimentation. RSP will also be added to the outlet.
4	53.15	Under the northbound lanes, there is a 78-foot long, 3-foot diameter corrugated steel pipe with sediment accumulation at the inlet.	The steel pipe will be replaced with a reinforced concrete pipe in the same diameter. A drainage inlet will be installed in median. The headwall will be replaced at inlet and outlet and a flare end section will be replaced at the inlet. Night work will be needed.
5	55.82	On the southbound lanes, the 36-inch diameter culvert is exposed for approximately 20 feet. ...	The exposed portion of culvert will be cut and replaced with a flared end section during the RSP installation.

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Lastly, Caltrans proposes to replace the failing sacked concrete on the bank of Nojoqui Creek with vegetated rock slope protection (RSP). To do this, a service road is necessary to gain access to the creek channel, and a temporary creek diversion will likely be required.

**Location:** This Project is located on U.S. 101 in Santa Barbara County, from 0.4 miles south of Santa Rosa Road at post mile R52.34 to 0.1 mile north of Nojoqui Creek near Buellton at post mile R56.09 (34.545078, -120.193852 to 34.594810, -120.194518).

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Caltrans in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

### Comment #1: Impacts to Streams

**Issue:** The Project may impact Nojoqui Creek and its tributaries.

**Specific impact:** The Project may impact the water quality, bed, bank, and channel of water courses in the Nojoqui Creek watershed as a result of construction activities that would remove vegetation, expose soil surfaces to erosion, and alter the hydrology within the channel.

**Why impact would occur:** Nojoqui Creek and several of its unnamed tributaries occur within the Project site. The Project proposes to replace approximately 500 feet of failing sacked concrete embankment with vegetated RSP on Nojoqui Creek and replace five drainage culverts as described in Table 1.1 of the MND. According to page 4 and 5 of the MND, "the project would establish a dirt access road in the southbound shoulder of U.S. 101 and extend it to the streambed" and "diversion of Nojoqui Creek is anticipated to be needed to construct the vegetated rock slope protection bank." These actions will impact the bed, bank, and channel of the streams at several locations within the Project boundaries.

**Evidence impact would be significant:** CDFW exercises its regulatory authority as provided by Fish and Game Code section 1600 et seq. to conserve fish and wildlife resources which includes rivers, streams, or lakes and associated natural communities. Fish and Game Code section 1602 requires any person, state or local governmental agency, or public utility to notify CDFW prior to beginning any activity that may do one or more of the following:

- Divert or obstruct the natural flow of any river, stream, or lake<sup>2</sup>;
- Change the bed, channel, or bank of any river, stream, or lake;
- Use material from any river, stream, or lake; or
- Deposit or dispose of material into any river, stream, or lake.

CDFW requires a Lake and Streambed Alteration (LSA) Notification when a project activity may substantially adversely affect fish and wildlife resources. The Project could result in reasonably foreseeable impacts on streams. Accordingly, the Project may have a significant impact on streams by modifying the bed and banks of several streams within the Project's footprint and temporarily diverting the natural flow of the stream during construction.

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<sup>2</sup> "Any river, stream, or lake" includes those that are dry for periods of time (ephemeral/episodic) as well as those that flow year-round (perennial). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a water body.

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### **Recommended potentially feasible mitigation measure(s):**

**Mitigation Measure #1:** The Project proposes to alter the bed, and bank of Nojoqui Creek and its tributaries. Therefore, the Project applicant should notify CDFW pursuant to Fish and Game Code 1602. Based on this notification and other information, CDFW should determine whether a Lake and Streambed Alteration (LSA) Agreement is required prior to conducting the proposed activities. Please visit CDFW's [Lake and Streambed Alteration Program](#) webpage for information about LSA Notification and online submittal through the Environmental Permit Information Management System (EPIMS) Permitting Portal (CDFW 2022b).

**Mitigation Measure #2:** If impacts to streams are unavoidable, Caltrans should provide compensatory mitigation for impacts on streams and associated plant communities. Any off-site mitigation should occur where a stream supports the same plant communities impacted by the Project and preferably within the same watershed.

**Recommendation #1:** CDFW recommends avoiding permanent impacts to the existing drainages. Caltrans should consider project alternatives that protect as much natural creek channel and natural hydrology as possible. CDFW recommends taking an inter-disciplinary approach to involve landscape architects, engineers, and wildlife biologists, and hydrologists to develop design alternatives that could fully avoid or lessen impacts to waters and riparian/wetland vegetation communities.

**Recommendation #2:** CDFW's issuance of an LSA Agreement 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 CEQA document from Caltrans for the Project. To minimize additional requirements by CDFW pursuant to Fish and Game Code section 1600 et seq. and/or under CEQA, the Project's CEQA document should fully identify the Project's potential impacts on stream or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for issuance of the LSA Agreement. As such, CDFW recommends Caltrans consider CDFW's comments and revise the MND by incorporating the mitigation measures and revisions recommended in this letter into the Project's final environmental document.

To compensate for any on- and off-site impacts to aquatic and riparian resources, additional mitigation conditioned in any LSA Agreement may include the following: erosion and pollution control measures, avoidance of resources, protective measures for downstream resources, on- and/or off-site habitat creation, enhancement, or restoration, and/or protection, and management of mitigation lands in perpetuity.

### **Comment #2: Wildlife Connectivity**

**Issue:** The Project may impact wildlife connectivity.

**Specific impact:** Project activities have the potential to significantly impact wildlife movement of local wildlife species.

**Why impacts would occur:** Roadways and associated culverts may increase population fragmentation, reduce survival by impeding movement to refugia habitat (i.e., disperse to adjacent habitat, locate food sources) or reproductive habitat (i.e., breeding habitat), and impede recolonization of potential habitat (Haddad et al., 2015). Therefore, it is important to maintain or improve existing culverts within roadway systems. According to page 20 in the NES, wildlife frequent the eight foot by eight-foot box concrete culvert at post mile 52.92 as evidenced by "many

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tracks in the silt, especially obvious at the outlet.” The Project proposes to place RSP at the outlet of the culvert, which may deter some native species, such as deer, from utilizing the culvert as a migration corridor. RSP may be used in small amounts to dissipate flows, but a natural soil pathway must be available for wildlife to navigate through the structure (Wakeling et al. 2015).

**Evidence impact would be significant:** The ecological footprint of roads extends beyond its physical footprint due to road mortality, habitat fragmentation, and indirect impacts (Spencer et al. 2010). Limiting movement and passage of species can lead to the reduction of genetic fitness in populations making them more vulnerable to changing or extreme conditions, the inability for populations to recolonize habitat after disturbance events (e.g. fires, floods, droughts), the loss of resident wildlife populations by altered community structure (e.g. species composition, distribution), and/or partial or complete loss of populations of migrant species due to blocked access to critical habitats (CDFW 2009, Haddad et al. 2015, Nicholson et al. 2006). Studies indicate that due to climate change, connectivity to thermal refugia is increasingly becoming more important for conserving populations as well as genetic diversity (Morelli et al. 2017, Chen et al. 2011). Therefore, reducing culvert size, increasing culvert length, and preserving current culvert size, location, and invert without wildlife movement analyses may preserve existing barriers where an opportunity is present to design structures that allow for improved movement conditions. Given the current design, the RSP will impede wildlife from moving through the area. This is a significant impact under CEQA that has not been analyzed and addressed (CEQA Guidelines § 15071(e)).

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

**Mitigation Measure #3:** RSP is proposed at the outlet of the culvert located at post mile 52.92. If RSP is necessary to stabilize the creek channel or bank, it should be placed so it does not impede movement of native wildlife. An earthen path should be designed into the RSP placement so that native wildlife can migrate past the RSP field. This earthen path should be designed so that maintenance to sustain functionality is not necessary. Monitoring of the earthen path should be conducted to ensure its functionality. If maintenance is necessary, Caltrans should conduct the repair immediately. If continued maintenance will be required, Caltrans should develop and implement a more permanent solution.

#### **Comment #3: Impacts to Southern California Distinct Population Segment of Steelhead (*Oncorhynchus mykiss*)**

**Issue:** CDFW is concerned that the Project could impact steelhead, a candidate species under CESA.

**Specific Impacts:** Project construction and activities may result in injury or mortality of steelhead, temporary loss of rearing habitat, and temporary loss of food sources.

**Why impacts would occur:** Run sizes of southern California DPS steelhead rivers have declined significantly since historical levels (Good et al. 2005, NMFS 2016). Habitat for steelhead has suffered destruction and modification, and anthropogenic activities have reduced the amount of habitat available to steelhead (Boughton et al. 2005). According to page 58 of the NES, “high quality salmonid habitat occurs in portions of Nojoqui Creek” and “the proposed project has the potential to result in take of steelhead during stream diversion and dewatering efforts, if present.” Although Project activities are scheduled during the dry months, temporary stream diversions may be necessary. Fish relocation for diversion installation would cause direct impacts to steelhead. Dewatering for the temporary creek diversion has the potential to injure or kill rearing juvenile steelhead within the Project reach. Therefore, Project impacts would potentially indirectly reduce the number of steelhead within the reach or directly take steelhead during dewatering.

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The Project would cause indirect impacts to steelhead by temporarily removing riparian vegetation. Riparian vegetation provides habitat for macroinvertebrates which are a food source for steelhead and shading of the creek which sustains lower creek temperatures for steelhead survival.

Although the MND addressed and provided measures to minimize impacts due to increased turbidities, temporary loss of vegetation, and avoiding take of adult steelhead, the Project may still impact juvenile steelhead.

**Evidence impact would be significant:** Consistent with CEQA Guidelines section 15380, the candidate status of southern California steelhead qualifies it as a special status species under CEQA. The Project contains structures that could threaten the ability to migrate. Per Fish and Game Code section 5901, it is unlawful to construct or maintain in any stream any device or contrivance that prevents, impedes, or tends to prevent or impeded, the passing of fish up and downstream. Per Fish and Game Code section 5937, the owner of any dam shall allow sufficient water at all times to pass through a fishway, or to keep in good condition any fish that may be planted or exists below the dam.

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

**Mitigation Measure #4:** The Project has the potential to take steelhead, a candidate species under CESA. Caltrans should seek appropriate take authorization, and early consultation is encouraged. CDFW may consider the Lead Agency's CEQA documentation for its CESA-related actions if it adequately analyzes/discloses impacts and mitigation to CESA-listed species. Additional documentation may be required as part of an ITP application for the Project in order for CDFW to adequately develop an accurate take analysis and identify measures that would fully mitigate for take of CESA-listed species.

**Mitigation Measure #5:** Mitigation Measure #3 should be revised by incorporating the underlined language and removing the language that has strikethrough:

3. Prior to any construction work within or adjacent to a waterbody with protected species, a qualified biologist (approved by the National Marine Fisheries Service and CDFW) will conduct focused preconstruction survey to determine if protected species may be present in the work area during construction. The preconstruction survey protocol, including number of focused surveys, shall be approved by CDFW prior to implementation.

**Mitigation Measure #6:** Mitigation Measure #4 should be revised by incorporating the underlined language and removing the language that has strikethrough:

4. If a National Marine Fisheries Service- and CDFW-approved biologist determines that protected species may be present in the work area during construction, the biologist will:

- a) Prepare a fish handling and relocation plan to be approved by CDFW.
- b) Conduct, monitor, and supervise all fish capture, handling, exclusion, and relocation activities (ensure that sufficient personnel are available to safely and efficiently collect listed species and that personnel have been properly trained to identify and safely capture and handle listed species).
- c) Ensure that protected species are relocated the shortest distance possible to suitable habitat unaffected by construction activities.
- d) Initiate salvage activities within temporarily drained waterbodies within a time frame necessary to avoid injury and mortality of protected species.

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- e) Complete capture, handling, exclusion, and relocation activities no earlier than 24 hours before construction begins to minimize the probability that listed species will recolonize the affected areas.
- f) Continuously monitor in-water activities (e.g., placement of cofferdams, dewatering of isolated areas) for the purpose of removing and relocating any listed species that were not detected or could not be removed and relocated prior to construction.

**Mitigation Measure #7:** Caltrans should consult with CDFW to determine if steelhead passage is required for the culverts associated with this Project.

**Comment #4: Impacts to Least Bell's Vireo (*Vireo bellii pusillus*) and Southwestern Willow Flycatcher (*Empidonax trailii extimus*)**

**Issue:** CDFW is concerned that the Project could impact least Bell's vireo and southwestern willow flycatcher, CESA and ESA-listed species.

**Specific impacts:** Project construction during the nesting season may result in injury or mortality of least Bell's vireo or southwestern willow flycatcher. The Project may result in a loss of breeding and/or foraging habitat for least Bell's vireo and southwestern willow flycatcher.

**Why impacts would occur:** Least Bell's vireo and southwestern willow flycatcher may occur on the Project's site or within the vicinity. The Project includes vegetation clearing and construction activities that could lead to their direct mortality or impact their reproductive success. Loss of occupied and suitable habitat could yield a loss of foraging potential, nesting sites, roosting sites, or refugia and would constitute a significant impact absent appropriate mitigation. In addition, noise from road use, generators, and other equipment may disrupt mating calls which could impact reproductive success (Patricelli and Blickley 2006).

Least Bell's vireo are obligate riparian breeders and require habitats that include thickets of willow, low shrubs, and water, including dry, intermittent streams. According to page 63 of the NES, "the willow-mulefat thickets and riparian corridor along Nojoqui Creek provide suitable foraging and nesting habitat for least Bell's vireo." Therefore, the Project may impact the reproductive success of least Bell's vireo. The NES states that protocol level surveys were not conducted for this project and there is suitable habitat for least Bell's vireo to forage and nest. Although the MND includes minimization measures to reduce impacts to least Bell's vireo if they are found, the buffer distances provided are insufficient to ensure impacts to nesting success is avoided.

Southwestern willow flycatcher occur in southern California through the summer months and migrate south to southern Mexico and Central America in the winter months. They prefer to nest in very dense riparian vegetation. The Project proposes to remove riparian vegetation to conduct Project activities. According to page 64 of the NES, the habitat on the Project site is "not suitable for nesting" and "may be used by the species for migration and foraging." Therefore, removing riparian vegetation would remove foraging habitat that may impact southwestern willow flycatcher. The NES states that protocol level surveys weren't conducted for this Project and there is suitable foraging habitat within the project limits. Although the MND includes minimization measures to reduce impacts to southwestern willow flycatcher if they are found on the project site, the buffer distances provided are insufficient to ensure impacts to flycatchers are avoided.

**Evidence impact would be significant:** CDFW considers impacts to CESA-listed and SSC a significant direct and cumulative adverse effect without implementing appropriate avoidance and/or mitigation measures. In addition, nests of all native bird species are protected under State laws

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and regulations, including Fish and Game Code, sections 3503 and 3503.5. CEQA provides protection for CESA-listed species and any species which can be shown to meet the criteria for State listing (CEQA Guidelines, § 15380). Take of any endangered, threatened, candidate species that results from the Project is prohibited, except as authorized by State law under CESA (Fish & G. Code, §§ 86, 2062, 2067, 2068, 2080, 2085; Cal. Code Regs., tit. 14, § 786.9).

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

**Mitigation Measure #7:** Vegetation should not be disturbed during nesting bird season, which generally occurs from February 1 through August 31, to avoid take of birds, their nests, eggs, or fledglings.

**Mitigation Measure #8:** Prior to Project construction and activities, CDFW recommends a qualified biologist conduct protocol surveys for least Bell's vireo and southwestern willow flycatcher. Least Bell's vireo surveys should follow [USFWS Least Bell's Vireo Survey Guidelines](#) (USFWS 2001). All riparian areas and any other potential least Bell's vireo habitat within 500 feet of the Project footprint should be surveyed at least eight times during the period from April 10 to July 31. Southwestern willow flycatcher surveys should follow [USGS Southwestern Willow Flycatcher Survey Protocol](#) (Sogge et al. 2010). All potential southwestern willow flycatcher habitat within 500 feet of the Project footprint should be surveyed from May 15 to July 17 per the protocol. Survey results, including negative findings, should be submitted to CDFW and USFWS within 45 calendar days following the completion of protocol-level surveys.

**Recommendation #3:** If the Project would impact least Bell's vireo or southwestern willow flycatcher, early consultation with CDFW is encouraged, as significant modification to a project and mitigation measures may be required to obtain a CESA Permit. Appropriate authorization from CDFW may include an Incidental Take Permit or a Consistency Determination in certain circumstances, among other options [Fish & G. Code, §§ 2080.1, 2081, subs. (b) and (c)].

Revisions to the Fish and Game Code, effective January 1998, may require that CDFW issue a separate CEQA document for the issuance of an Incidental Take Permit unless the project CEQA document addresses all project impacts to CESA-listed species and specifies full mitigation and a mitigation monitoring and reporting program that will meet the requirements of an Incidental Take Permit. For these reasons, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA Incidental Take Permit.

### **Comment #5: Impacts to Bats**

**Issue:** The Project may have impacts to bats.

**Specific impacts:** The Project may result in direct and indirect impacts to bats. Direct impacts include removal of trees, vegetation, and altering culverts that provide roosting habitat and therefore has the potential for the direct loss of bats. Indirect impacts to bats and roosts could result from increased noise disturbances, human activity, additional artificial light, dust, vegetation clearing, ground disturbing activities (e.g., staging, access, excavation, grading), and vibrations caused by heavy equipment.

**Why impacts would occur:** Bats use trees and man-made structures for daytime and nighttime roosts (Avila-Flores and Fenton 2005; Oprea et al. 2009; Remington and Cooper 2014). Townsend's big-eared bats (*Corynorhinus townsendii*), a Species of Special Concern (SSC), were observed roosting in culverts at pm 52.38 and 52.92. There also is evidence of pallid bats (*Antrozous pallidus*), another Species of Special Concern, observed according to the NES.



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The proposed repairs of the culverts will require exclusion from these culverts for several months. Modifications to roost sites can have significant impacts on the bats' usability of the roost and can impact the bats' fitness and survivability (Johnston et al. 2004). Even minor disturbance can lead to the abandonment of roosts (Johnston et al. 2004). Townsend's big-eared bats are known to be highly sensitive to disturbances and may abandon roosts (Barbour and Davis 1969).

**Evidence impact would be significant:** Bats are considered non-game mammals and are afforded protection by State law from take and/or harassment (Fish & Game Code, § 4150; Cal. Code of Regs, § 251.1). Several bat species are considered SSC and meet the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15065). Take of SSC could require a mandatory finding of significance (CEQA Guidelines, § 15065).

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

**Mitigation Measure #9:** CDFW recommends a qualified bat specialist conduct nighttime emergence bat surveys during the appropriate time of year to determine if the culverts host maternity roosts. If maternity roosts are found, a qualified bat biologist should develop a Bat Management Plan for CDFW approval prior to the start of construction.

**Mitigation Measure #10:** CDFW recommends Caltrans revise Mitigation Measure #1 by incorporating the underlined language and removing the language that has strikethrough applied:

Tree removal shall be scheduled to occur from ~~September~~October 2 to January 31, outside of the typical bat maternity roosting season, ~~if possible~~, to avoid potential impacts to roosting bats. If trees ~~or other structures must be removed~~ removal or other construction activities are proposed to occur within 100 ft of potential habitat during the bat maternity roosting season (February 1 to ~~September~~October 1), a bat roost survey shall be conducted by a CDFW-approved bat biologist determined ~~qualified by Caltrans~~ within 14 days prior to construction. The biologist(s) conducting the preconstruction surveys will also identify the nature of the bat utilization (i.e., no roosting, night roost, day roost, maternity roost) ~~and determine if passive bat exclusion will be necessary and feasible~~. If an active day roost is found, ~~a qualified Caltrans biologist shall determine an appropriate buffer based on the habits and needs of the species~~ work shall not occur within 100 feet of the roost until roosting is no longer detected. The buffer area shall be avoided until a qualified biologist has determined that roosting activity has ceased. ~~or exclusionary methods have successfully evicted roosting bats~~. Work shall not occur between 30 minutes before sunset and 30 minutes after sunrise.

### Comment #6: Impacts on California Species of Special Concern

**Issue:** The Project may impact California Species of Special Concern.

**Specific impacts:** The Project could result in loss of coast range newt (*Taricha torosa*); California red-legged frog (*Rana draytonii*), coast horned lizard (*Phrynosoma blainvillii*); Northern California legless lizard (*Anniella pulchra*); American badger (*Taxidea taxus*); western pond turtle (*Actinemys pallida*); and two-striped garter snake (*Thamnophis hammondi*).

**Why impacts would occur:** According to Table 4 on page 34 in the NES, the Project site has the potential to support the above listed SSC. The Project would require ground-disturbance and vegetation removal using heavy equipment. These activities create elevated levels of noise, human activity, dust, ground vibrations, and vegetation disturbance. Wildlife may be trapped or crushed under structures. Large equipment, equipment and material staging, and vehicle and foot traffic could trample or bury wildlife. Project construction and activities, directly or through habitat

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modification, may result in injury or mortality, reduced reproductive capacity, population declines, or local extirpation of an SSC. Also, loss of foraging, breeding, or nursery habitat for an SSC may occur as a result of the Project.

**Evidence impacts would be significant:** A [California Species of Special Concern](#) is a species, subspecies, or distinct population of an animal native to California that currently satisfies one or more of the following (not necessarily mutually exclusive) criteria:

- is extirpated from the State or, in the case of birds, is extirpated in its primary season or breeding role;
- is listed as Endangered Species Act, but not CESA, threatened, or endangered; meets the State definition of threatened or endangered but has not formally been listed;
- is experiencing, or formerly experienced, serious (noncyclical) population declines or range retractions (not reversed) that, if continued or resumed, could qualify it for State threatened or endangered status; and/or
- has naturally small populations exhibiting high susceptibility to risk from any factor(s), that if realized, could lead to declines that would qualify it for CESA threatened or endangered status (CDFW 2022a).

CEQA provides protection not only for CESA-listed species, but for any species including but not limited to SSC which can be shown to meet the criteria for State listing. These SSC meet the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380). Therefore, take of SSC could require a mandatory finding of significance (CEQA Guidelines, § 15065). Impacts to any sensitive or special status species should be considered significant under CEQA unless they are clearly mitigated, through appropriate disclosure of the proposed mitigation measures, below a level of significance.

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

**Mitigation Measure #12:** The Project applicant should retain a qualified biologist to prepare a Wildlife Relocation and Avoidance Plan. The Wildlife Relocation and Avoidance Plan should describe all SSC that could occur within the Project site and proper avoidance, handling, and relocation protocols. The Wildlife Relocation Plan should include species-specific avoidance buffers and suitable relocation areas at least 200 feet outside of the Project site.

**Mitigation Measure #13:** To avoid direct injury and mortality of SSC, the Project applicant should have a qualified biologist on site to move out of harm's way wildlife that would be injured or killed. Wildlife should be allowed to move away on its own (non-invasive, passive relocation), or relocated to suitable habitat adjacent to the Project site. In areas where an SSC is found, work may only occur in these areas after a qualified biologist has determined it is safe to do so. Even so, the qualified biologist should advise workers to proceed with caution. A qualified biologist should be on site daily during initial ground and habitat disturbing activities as well as vegetation removal. Then, the qualified biologist should be on site weekly or bi-weekly (once every two weeks) for the remainder of the Project phase until the cessation of all ground and habitat disturbing activities, as well as vegetation removal, to ensure that no wildlife is harmed.

**Mitigation Measure #14:** CDFW recommends Caltrans retain a qualified biologist with appropriate handling permits, or should obtain appropriate handling permits to capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with Project construction and activities (Cal. Code Regs., tit. 14, § 650). CDFW has the authority to issue permits for the take or possession of wildlife, including mammals; birds, nests, and eggs; reptiles, amphibians, fish,

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plants; and invertebrates (Fish & G. Code, §§ 1002, 1002.5, 1003). Effective October 1, 2018, a Scientific Collecting Permit is required to monitor project impacts on wildlife resources, as required by environmental documents, permits, or other legal authorizations; and, to capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with otherwise lawful activities (Cal. Code Regs., tit. 14, § 650). Please visit CDFW's [Scientific Collection Permits](https://wildlife.ca.gov/Licensing/Scientific-Collecting#53949678) webpage for information available at <https://wildlife.ca.gov/Licensing/Scientific-Collecting#53949678>.

**Mitigation Measure #15:** If any SSC are harmed during relocation or a dead or injured animal is found, work in the immediate area should stop immediately, the qualified biologist should be notified, and dead or injured wildlife documented immediately. A formal report should be sent to CDFW within three calendar days of the incident or finding. The report should include the date, time of the finding or incident (if known), and location of the carcass or injured animal and circumstances of its death or injury (if known). Work in the immediate area may only resume once the proper notifications have been made and additional mitigation measures have been identified to prevent additional injury or death.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations presented in Attachment A to assist Lead Agency in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included in Attachment A to improve the document.

## 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 filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## ENVIRONMENTAL DOCUMENT FILING FEES

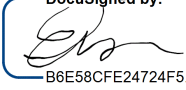
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing 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 MND to assist Caltrans in identifying and mitigating Project impacts on biological resources. CDFW requests an opportunity to review and comment on any response that Caltrans has to our comments. Questions regarding this letter or further coordination should be directed to Erika Cleugh Senior Environmental Scientist (Specialist) at (949) 619-5228 or [Erika.Cleugh@wildlife.ca.gov](mailto:Erika.Cleugh@wildlife.ca.gov).

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Sincerely,

DocuSigned by:  
  
B6E58CFE24724F5...

Erinn Wilson-Olgin  
Environmental Program Manager I  
South Coast Region

#### Attachments

A. CDFW Comments and Recommendations

cc: CDFW

Steve Gibson, Los Alamitos – [Steve.Gibson@wildlife.ca.gov](mailto:Steve.Gibson@wildlife.ca.gov)

Erika Cleugh, Los Alamitos – [Erika.Cleugh@wildlife.ca.gov](mailto:Erika.Cleugh@wildlife.ca.gov)

Cindy Hailey, San Diego – [Cindy.Hailey@wildlife.ca.gov](mailto:Cindy.Hailey@wildlife.ca.gov)

CEQA Program Coordinator, Sacramento – [CEQACommentLetters@wildlife.ca.gov](mailto:CEQACommentLetters@wildlife.ca.gov)

OPR

State Clearinghouse, Sacramento – [State.Clearinghouse@opr.ca.gov](mailto:State.Clearinghouse@opr.ca.gov)

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### Attachment A: Mitigation and Monitoring Reporting Plan

CDFW recommends the following language to be incorporated into a future environmental document for the Project. A final MMRP shall reflect results following additional plant and wildlife surveys and the Project's final on and/or off-site mitigation plans.

<b>Biological Resources (BIO)</b>			
<b>Mitigation Measure (MM) or Recommendation (REC)</b>		<b>Timing</b>	<b>Responsible Party</b>
<b>MM-BIO-1- Impacts to Streams</b>	The Project proposes to alter the bed, and bank of Nojoqui Creek and its tributaries. Therefore, the Project applicant should notify CDFW pursuant to Fish and Game Code 1602. Based on this notification and other information, CDFW should determine whether a Lake and Streambed Alteration (LSA) Agreement is required prior to conducting the proposed activities. Please visit CDFW's <a href="#">Lake and Streambed Alteration Program</a> webpage for information about LSA Notification and online submittal through the Environmental Permit Information Management System (EPIMS) Permitting Portal (CDFW 2022b).	Prior to Project construction and activities	Lead Agency/ Applicant
<b>MM-BIO-2- Impacts to Streams</b>	If impacts to streams are unavoidable, Caltrans should provide compensatory mitigation for impacts on streams and associated plant communities. Any off-site mitigation should occur where a stream supports the same plant communities impacted by the Project and preferably within the same watershed.	Prior to Project construction and activities	Lead Agency/ Applicant
<b>Recommendation -BIO-1- Impacts to Streams</b>	CDFW recommends avoiding permanent impacts to the existing drainages. Caltrans should consider project alternatives that protect as much natural creek channel and natural hydrology as possible. CDFW recommends taking an inter-disciplinary approach to involve landscape architects, engineers, and wildlife biologists, and hydrologists to develop design alternatives that could fully avoid or lessen impacts to waters and riparian/wetland vegetation communities.	Prior to Project construction and activities	Lead Agency/ Applicant
<b>Recommendation -BIO-2- Impacts to Streams</b>	CDFW's issuance of an LSA Agreement 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 CEQA document from Caltrans for the Project. To minimize additional requirements by CDFW pursuant to Fish and Game Code section 1600 et seq. and/or under CEQA, the Project's CEQA document should fully identify the Project's potential impacts on stream or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for issuance of the LSA Agreement. As such, CDFW recommends Caltrans consider CDFW's comments and revise the MND by incorporating the mitigation measures and revisions recommended in this letter into the Project's final environmental document.	Prior to Project construction and activities	Lead Agency/ Applicant

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<b>MM-BIO-3- Wildlife Connectivity</b>	<p>RSP is proposed at the outlet of the culvert located at post mile 52.92. If RSP is necessary to stabilize the creek channel or bank, it should be placed so it does not impede movement of native wildlife. An earthen path should be designed into the RSP placement so that native wildlife can migrate past the RSP field. This earthen path should be designed so that maintenance to sustain functionality is not necessary. Monitoring of the earthen path should be conducted to ensure its functionality. If maintenance is necessary, Caltrans should conduct the repair immediately. If continued maintenance will be required Caltrans should develop and implement a more permanent solution.</p>	<p>Prior to/During Project construction and activities</p>	<p>Lead Agency/ Applicant</p>
<b>MM-BIO-4- Impacts to Southern California DPS Steelhead</b>	<p>The Project has the potential to take steelhead, a candidate species under CESA. Caltrans should seek appropriate take authorization, and early consultation is encouraged. CDFW may consider the Lead Agency's CEQA documentation for its CESA-related actions if it adequately analyzes/discloses impacts and mitigation to CESA-listed species. Additional documentation may be required as part of an ITP application for the Project in order for CDFW to adequately develop an accurate take analysis and identify measures that would fully mitigate for take of CESA-listed species.</p>	<p>Prior to Project construction and activities</p>	<p>Lead Agency/ Applicant</p>
<b>MM-BIO-5- Impacts to Southern California DPS Steelhead</b>	<p>Mitigation Measure #3 should be revised by incorporating the <u>underlined</u> language and removing the language that has strikethrough:</p> <p>3. Prior to any construction work within or adjacent to a waterbody with protected species, a qualified biologist (approved by the National Marine Fisheries Service and CDFW) will conduct <u>focused</u> preconstruction survey to determine if protected species may be present in the work area during construction. <u>The preconstruction survey protocol, including number of focused surveys, shall be approved by CDFW prior to implementation.</u></p>	<p>Prior to Project construction and activities</p>	<p>Lead Agency/ Applicant</p>
<b>MM-BIO-6- Impacts to Southern California DPS Steelhead</b>	<p>Mitigation Measure #4 should be revised by incorporating the <u>underlined</u> language and removing the language that has strikethrough:</p> <p>4. If a National Marine Fisheries Service- <u>and CDFW-approved biologist</u> determines that protected species may be present in the work area during construction, the biologist will:</p> <ol style="list-style-type: none"> <li>a) Prepare a fish handling and relocation plan to be approved by CDFW.</li> <li>b) Conduct, monitor, and supervise all fish capture, handling, exclusion, and relocation activities (ensure that sufficient personnel are available to safely and efficiently collect listed species and that personnel have been properly trained to identify and safely capture and handle listed species).</li> <li>c) Ensure that protected species are relocated the shortest distance possible to suitable habitat unaffected by construction activities.</li> <li>d) Initiate salvage activities within temporarily drained waterbodies within a time frame necessary to avoid injury and mortality of protected species.</li> </ol>	<p>Prior to/During Project construction and activities</p>	<p>Lead Agency/ Applicant</p>



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	<p>e) Complete capture, handling, exclusion, and relocation activities no earlier than 24 hours before construction begins to minimize the probability that listed species will recolonize the affected areas.</p> <p>f) Continuously monitor in-water activities (e.g., placement of cofferdams, dewatering of isolated areas) for the purpose of removing and relocating any listed species that were not detected or could not be removed and relocated prior to construction.</p>		
<b>MM-BIO-7- Impacts to Southern California DPS Steelhead</b>	Caltrans should consult with CDFW to determine if steelhead passage is required for the culverts associated with this Project.	Prior to Project construction and activities	Lead Agency/ Applicant
<b>MM-BIO-8- Impacts to Least Bell's Vireo and Southwestern Willow Flycatcher</b>	Vegetation should not be disturbed during nesting bird season, which generally occurs from February 1 through August 31, to avoid take of birds, their nests, eggs, or fledglings.	Prior to/During Project construction and activities	Lead Agency/ Applicant
<b>MM-BIO-9- Impacts to Least Bell's Vireo and Southwestern Willow Flycatcher</b>	Prior to Project construction and activities, CDFW recommends a qualified biologist conduct protocol surveys for least Bell's vireo and southwestern willow flycatcher. Least Bell's vireo surveys should follow <a href="#">USFWS Least Bell's Vireo Survey Guidelines</a> (USFWS 2001). All riparian areas and any other potential least Bell's vireo habitat within 500 feet of the Project footprint should be surveyed at least eight times during the period from April 10 to July 31. Southwestern willow flycatcher surveys should follow <a href="#">USGS Southwestern Willow Flycatcher Survey Protocol</a> (Sogge et al. 2010). All potential southwestern willow flycatcher habitat within 500 feet of the Project footprint should be surveyed from May 15 to July 17 per the protocol. Survey results, including negative findings, should be submitted to CDFW and USFWS within 45 calendar days following the completion of protocol-level surveys.	Prior to Project construction and activities	Lead Agency/ Applicant
<b>Recommendation -BIO-3- Impacts to Streams</b>	If the Project would impact least Bell's vireo or southwestern willow flycatcher, early consultation with CDFW is encouraged, as significant modification to a project and mitigation measures may be required to obtain a CESA Permit. Appropriate authorization from CDFW may include an Incidental Take Permit or a Consistency Determination in certain circumstances, among other options [Fish & G. Code, §§ 2080.1, 2081, subds. (b) and (c)].	Prior to Project construction and activities	Lead Agency/ Applicant



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	Revisions to the Fish and Game Code, effective January 1998, may require that CDFW issue a separate CEQA document for the issuance of an Incidental Take Permit unless the project CEQA document addresses all project impacts to CESA-listed species and specifies full mitigation and a mitigation monitoring and reporting program that will meet the requirements of an Incidental Take Permit. For these reasons, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA Incidental Take Permit.		
<b>MM-BIO-10- Impacts to Bats</b>	CDFW recommends a qualified bat specialist conduct nighttime emergence bat surveys during the appropriate time of year to determine if the culverts host maternity roosts. If maternity roosts are found, a qualified bat biologist should develop a Bat Management Plan for CDFW approval prior to the start of construction.	Prior to Project construction and activities	Lead Agency/ Applicant
<b>MM-BIO-11- Impacts to Bats</b>	CDFW recommends Caltrans revise Mitigation Measure #1 by incorporating the underlined language and removing the language that has strikethrough applied:  Tree removal shall be scheduled to occur from <del>September</del> <u>October 2</u> to January 31, outside of the typical bat maternity roosting season, if possible, to avoid potential impacts to roosting bats. If trees <u>or other structures must be removed</u> or other construction activities are proposed to occur within 100 ft of potential habitat during the bat maternity roosting season (February 1 to <del>September</del> <u>October 1</u> ), a bat roost survey shall be conducted by a <u>CDFW-approved bat</u> biologist determined qualified by Caltrans within 14 days prior to construction. The biologist(s) conducting the preconstruction surveys will also identify the nature of the bat utilization (i.e., no roosting, night roost, day roost, maternity roost) and determine if passive bat exclusion will be necessary and feasible. If an active day roost is found, a qualified Caltrans biologist shall determine an appropriate buffer based on the habits and needs of the species <u>work shall not occur within 100 feet of the roost until roosting is no longer detected</u> . The buffer area shall be avoided until a qualified biologist has determined that roosting activity has ceased. or exclusionary methods have successfully evicted roosting bats. <u>Work shall not occur between 30 minutes before sunset and 30 minutes after sunrise.</u>	Prior to Project construction and activities	Lead Agency/ Applicant
<b>MM-BIO-12- Impacts to Species of Special Concern</b>	The Project applicant should retain a qualified biologist to prepare a Wildlife Relocation and Avoidance Plan. The Wildlife Relocation and Avoidance Plan should describe all SSC that could occur within the Project site and proper avoidance, handling, and relocation protocols. The Wildlife Relocation Plan should include species-specific avoidance buffers and suitable relocation areas at least 200 feet outside of the Project site.	Prior to Project construction and activities	Lead Agency/ Applicant

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<b>MM-BIO-13- Impacts to Species of Special Concern</b>	<p>To avoid direct injury and mortality of SSC, the Project applicant should have a qualified biologist on site to move out of harm's way wildlife that would be injured or killed. Wildlife should be allowed to move away on its own (non-invasive, passive relocation), or relocated to suitable habitat adjacent to the Project site. In areas where an SSC is found, work may only occur in these areas after a qualified biologist has determined it is safe to do so. Even so, the qualified biologist should advise workers to proceed with caution. A qualified biologist should be on site daily during initial ground and habitat disturbing activities as well as vegetation removal. Then, the qualified biologist should be on site weekly or bi-weekly (once every two weeks) for the remainder of the Project phase until the cessation of all ground and habitat disturbing activities, as well as vegetation removal, to ensure that no wildlife is harmed.</p>	<p>During Project construction and activities</p>	<p>Lead Agency/ Applicant</p>
<b>MM-BIO-14- Impacts to Species of Special Concern</b>	<p>CDFW recommends Caltrans retain a qualified biologist with appropriate handling permits, or should obtain appropriate handling permits to capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with Project construction and activities (Cal. Code Regs., tit. 14, § 650). CDFW has the authority to issue permits for the take or possession of wildlife, including mammals; birds, nests, and eggs; reptiles, amphibians, fish, plants; and invertebrates (Fish &amp; G. Code, §§ 1002, 1002.5, 1003). Effective October 1, 2018, a Scientific Collecting Permit is required to monitor project impacts on wildlife resources, as required by environmental documents, permits, or other legal authorizations; and, to capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with otherwise lawful activities (Cal. Code Regs., tit. 14, § 650). Please visit CDFW's <a href="https://wildlife.ca.gov/Licensing/Scientific-Collecting#53949678">Scientific Collection Permits</a> webpage for information available at <a href="https://wildlife.ca.gov/Licensing/Scientific-Collecting#53949678">https://wildlife.ca.gov/Licensing/Scientific-Collecting#53949678</a>.</p>	<p>Prior to/During Project construction and activities</p>	<p>Lead Agency/ Applicant</p>
<b>MM-BIO-15- Impacts to Species of Special Concern</b>	<p>If any SSC are harmed during relocation or a dead or injured animal is found, work in the immediate area should stop immediately, the qualified biologist should be notified, and dead or injured wildlife documented immediately. A formal report should be sent to CDFW within three calendar days of the incident or finding. The report should include the date, time of the finding or incident (if known), and location of the carcass or injured animal and circumstances of its death or injury (if known). Work in the immediate area may only resume once the proper notifications have been made and additional mitigation measures have been identified to prevent additional injury or death.</p>	<p>During Project construction and activities</p>	<p>Lead Agency/ Applicant</p>