



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
3602 Inland Empire Boulevard, Suite C-220
Ontario, CA 91764
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

October 21, 2022
Sent via email

Oct 24 2022

STATE CLEARINGHOUSE

Shawn Oriaz
Senior Environmental Planner
California Department of Transportation District 8
464 W. 4th Street, MS 829
San Bernardino, California 92401-1400
Shawn.Oriaz@dot.ca.gov

Mitigated Negative Declaration (MND) Reconstruct and Upgrade Eastbound and Westbound Cactus City SRRA Facilities (Project) State Clearinghouse No. 2022090055

Dear Mr. Oriaz:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from California Department of Transportation District 8 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, 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

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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need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: California Department of Transportation District 8

Objective: The purpose of this project is to rehabilitate and upgrade both Eastbound and Westbound Cactus City Safety Roadside Rest Areas (SRRA) by demolishing the existing structures and replacing with new structures, upgrade water and wastewater systems, realign the on and off ramps and expand the parking lots to accommodate the forecasted traffic need.

Location: The project is located both north and south Interstate-10 (I-10) between postmiles 71.8 and 72.40 approximately 15 miles east of the City of Indio in Riverside County.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist California Department of Transportation District 8 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 to improve the document. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, CDFW concludes that a Mitigated Negative Declaration is appropriate for the Project.

Burrowing Owl (*Athene cunicularia*)

The Special-Status Avian Species listed in the IS does include the burrowing owl (BUOW) and the environmental document indicated that there is suitable habitat for BUOW within the project area. **Bio-Avian-2 Pre-Construction Burrowing Owl Survey** should include specific language to include specific surveys to detect nesting BUOW. CDFW recommends the following modifications to **Bio-Avian-2 Pre-Construction Burrowing Owl Survey** (edits are in ~~strike through~~ and underline) and are also included in Attachment 1 "Mitigation Monitoring and Reporting Program". :

Bio-Avian-2 Pre-Construction Burrowing Owl Survey: Permittee shall ensure that impacts to burrowing owls and take of burrowing owls are avoided through the implementation of preconstruction surveys and ongoing monitoring. If impacts to

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burrowing habitat cannot be avoided, then Permittee shall implement the required minimization and mitigation measures. Two burrowing owl preconstruction surveys must be performed: one survey 14-30 days prior to project activities, and one survey 24 hours prior to project activities.

1. Burrowing Owl Habitat Assessment. **Prior to the initiation of Project activities,** Caltrans shall conduct a burrowing owl habitat assessment consistent with the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012). A habitat assessment shall be conducted by Designated Biologist(s) knowledgeable of burrowing owl habitat, ecology, and field identification of the species, burrow and burrow surrogates, and burrowing owl sign **at least thirty (30) calendar days prior to the initiation of Project activities.** The assessment shall consist of walking the Project site to identify the presence of burrowing owl habitat. Survey duration shall take into consideration the size of the property; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate. A report summarizing the results of the habitat assessment shall be submitted to CDFW **within 10 days of survey completion.**
2. Survey for Burrowing Owls Prior to Impacts. If the burrowing owl habitat assessment identifies burrowing owl habitat or sign on site, Caltrans shall have a Designated Biologist(s) pre-approved by CDFW perform a survey for burrowing owls **between 30 and 60 days** prior to Project activities. Occupancy of burrowing owl habitat is confirmed at a site when at least one burrowing owl, or its sign at or near a burrow entrance, is observed within the last three years. If occupancy is not confirmed during an initial burrowing owl survey during the breeding season, additional surveys, at least three or more, shall occur at least three weeks apart during the peak of the breeding season. Surveys shall be conducted during the day when most burrowing owls in a local area are in the laying and incubation period, during the nesting period, and in the late nestling period when most owls are spending time above ground.
3. Burrowing Owl Survey Results. Caltrans shall submit the survey methodology and results **within ten days** of survey completion and **at least twenty-one days prior** to commencement of Project activities to CDFW.
4. Burrowing Owl Pre-Construction Inspection. If burrowing owl habitat is found onsite, Caltrans shall have a Designated Biologist(s), pre-approved by CDFW, inspect all burrows that exhibit typical characteristics of owl activity **within three (3) days prior** to any site-preparation activities. Evidence of owl activity may include presence of owls themselves, burrows, and owl sign at burrow entrances such as pellets, whitewash or other "ornamentation," feathers, prey remains, etc. If it is evident that the burrows are actively being used, Caltrans shall not commence activities until no sign is present that the burrows are being used by adult or juvenile owls or following CDFW approval of a Burrowing Owl Plan as

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described. CDFW shall be notified in writing of detection of active burrows **within three (3) days.**

5. Burrowing Owl Plan. If burrowing owls are detected on the Project site, Caltrans shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval **at least 30 days prior to** initiation of Project activities. If burrowing owls are detected after Project activities have been initiated, a Burrowing Owl Plan shall be submitted to CDFW for review and approval **within two weeks of detection** and no Project activity shall continue within 1000 feet of the burrowing owls. Project activities shall not occur within 1000 feet of an active burrow until CDFW approves the Burrowing Owl Plan. The Burrowing Owl Plan shall include 1) impact assessment that details the number and location of occupied burrow sites, and acres of burrowing owl habitat with a qualitative description of the habitat vegetation characteristics that will be impacted; 2) if avoidance of impacts is proposed details on avoidance actions and monitoring such on proposed buffers, visual barriers and other actions; 3) site monitoring to be conducted prior to, during, and after any exclusion of burrowing owls from their burrows sufficient to ensure take is avoided, daily monitoring with cameras and direct observation for one week to confirm young of the year have fledged if the exclusion will occur immediately after the end of the breeding season, and process to document any excluded burrowing owls are using artificial or natural burrows on an adjoining mitigation site (if able to confirm by band re- sight). If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe minimization and compensatory mitigation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method, may be a potentially significant impact under CEQA, and has the possibility to result in take which is not authorized by this Agreement. The Burrowing Owl Plan shall identify compensatory mitigation for the temporary or permanent loss of occupied burrow(s) and habitat consistent with the "Mitigation Impacts" section of the 2012 Staff Report and shall implement CDFW-approved mitigation prior to initiation of Project activities. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls. If no suitable habitat is available nearby, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls shall also be included in the Burrowing Owl Plan. The Permittee shall implement the Burrowing Owl Plan following CDFW review and approval.
6. Burrowing Owls Observed During Construction. If burrowing owls are observed within Project Site(s) during Project implementation and construction, Permittee shall **notify CDFW immediately** in writing.

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Desert Tortoise (*Gopherus agassizii*)

CDFW recommends the measure to reduce the attractiveness of the site to common raven and other predators should be extended to operation and maintenance of the roadside rest area. Trash receptacles should be designed to be raven-proof with lids. When in operation, trash receptacles should be emptied on a consistent basis so that trash does not overflow from the receptacle. Suggested changes to **Bio-Reptile-5 - Trash/Predation** are below:

Bio-Reptile-5 - Trash/Predation: Caltrans must implement measures to reduce the attractiveness of job sites to common raven, and other predators and scavengers by controlling trash and educating workers. Additionally, trash receptacles installed within the rest area should be designed to have locking lids to deter common raven and other scavengers from being able to access the contents of the receptacle. Signage should be installed to encourage use of the trash cans. When the rest area is in operation, trash should be removed regularly so that it does not spill out of the receptacle.

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 California Department of Transportation District 8 in identifying and mitigating Project impacts on biological resources.

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Questions regarding this letter or further coordination should be directed to Jason Bill, Environmental Scientist Specialist at Christopher.Bill@wildlife.ca.gov or (909) 549-5878.

Sincerely,

DocuSigned by:

84FBB8273E4C480...
Alisa Ellsworth
Environmental Program Manager

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

ATTACHMENTS

Mitigation Monitoring and Reporting Program (MMRP) for CDFW-Proposed Mitigation Measures

REFERENCES

Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation.
<https://www.wildlife.ca.gov/conservation/survey-protocols>

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ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP) FOR CDFW-PROPOSED MITIGATION MEASURES

PURPOSE OF THE MMRP

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

TABLE OF MITIGATION MEASURES

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

Mitigation Measure (MM) Description	Implementation Schedule	Responsible Party
<p>Bio-Avian-2 Pre-Construction Burrowing Owl Survey - <u>Permittee shall ensure that impacts to burrowing owls and take of burrowing owls are avoided through the implementation of preconstruction surveys and ongoing monitoring. If impacts to burrowing habitat cannot be avoided, then Permittee shall implement the required minimization and mitigation measures. Two burrowing owl preconstruction surveys must be performed: one survey 14-30 days prior to project activities, and one survey 24 hours prior to project activities.</u></p> <p>1. <u>Burrowing Owl Habitat Assessment. Prior to the initiation of Project activities, Caltrans shall conduct a burrowing owl habitat assessment consistent with the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012). A habitat assessment shall be conducted by Designated Biologist(s) knowledgeable of burrowing owl habitat, ecology, and field identification of the species, burrow and burrow surrogates, and burrowing owl sign</u></p>	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>

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<p><u>at least thirty (30) calendar days prior to the initiation of Project activities. The assessment shall consist of walking the Project site to identify the presence of burrowing owl habitat. Survey duration shall take into consideration the size of the property; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate. A report summarizing the results of the habitat assessment shall be submitted to CDFW within 10 days of survey completion.</u></p> <p>2. <u>Survey for Burrowing Owls Prior to Impacts. If the burrowing owl habitat assessment identifies burrowing owl habitat or sign on site, Caltrans shall have a Designated Biologist(s) pre-approved by CDFW perform a survey for burrowing owls between 30 and 60 days prior to Project activities. Occupancy of burrowing owl habitat is confirmed at a site when at least one burrowing owl, or its sign at or near a burrow entrance, is observed within the last three years. If occupancy is not confirmed during an initial burrowing owl survey during the breeding season, additional surveys, at least three or more, shall occur at least three weeks apart during the peak of the breeding season. Surveys shall be conducted during the day when most burrowing owls in a local area are in the laying and incubation period, during the nesting period, and in the late nestling period when most owls are spending time above ground.</u></p> <p>3. <u>Burrowing Owl Survey Results. Caltrans shall submit the survey methodology and results within ten days of survey completion and at least twenty-one days prior to commencement of Project activities to CDFW.</u></p>		
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<p>4. <u>Burrowing Owl Pre-Construction Inspection.</u> <u>If burrowing owl habitat is found onsite, Caltrans shall have a Designated Biologist(s), pre-approved by CDFW, inspect all burrows that exhibit typical characteristics of owl activity within three (3) days prior to any site-preparation activities. Evidence of owl activity may include presence of owls themselves, burrows, and owl sign at burrow entrances such as pellets, whitewash or other “ornamentation,” feathers, prey remains, etc. If it is evident that the burrows are actively being used, Caltrans shall not commence activities until no sign is present that the burrows are being used by adult or juvenile owls or following CDFW approval of a Burrowing Owl Plan as described. CDFW shall be notified in writing of detection of active burrows within three (3) days.</u></p> <p>5. <u>Burrowing Owl Plan.</u> <u>If burrowing owls are detected on the Project site, Caltrans shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval at least 30 days prior to initiation of Project activities. If burrowing owls are detected after Project activities have been initiated, a Burrowing Owl Plan shall be submitted to CDFW for review and approval within two weeks of detection and no Project activity shall continue within 1000 feet of the burrowing owls. Project activities shall not occur within 1000 feet of an active burrow until CDFW approves the Burrowing Owl Plan. The Burrowing Owl Plan shall include 1) impact assessment that details the number and location of occupied burrow sites, and acres of burrowing owl habitat with a qualitative description of the habitat vegetation characteristics that will be impacted; 2) if avoidance of impacts is proposed details on avoidance actions and monitoring such on proposed buffers, visual barriers and other actions; 3) site monitoring</u></p>		
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<p><u>to be conducted prior to, during, and after any exclusion of burrowing owls from their burrows sufficient to ensure take is avoided, daily monitoring with cameras and direct observation for one week to confirm young of the year have fledged if the exclusion will occur immediately after the end of the breeding season, and process to document any excluded burrowing owls are using artificial or natural burrows on an adjoining mitigation site (if able to confirm by band re-sight). If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe minimization and compensatory mitigation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method, may be a potentially significant impact under CEQA, and has the possibility to result in take which is not authorized by this Agreement. The Burrowing Owl Plan shall identify compensatory mitigation for the temporary or permanent loss of occupied burrow(s) and habitat consistent with the "Mitigation Impacts" section of the 2012 Staff Report and shall implement CDFW-approved mitigation prior to initiation of Project activities. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls. If no suitable habitat is available nearby, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls shall also be included in the Burrowing Owl Plan. The Permittee shall implement the Burrowing Owl Plan following CDFW review and approval.</u></p>		
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<p>6. <u>Burrowing Owls Observed During Construction. If burrowing owls are observed within Project Site(s) during Project implementation and construction, Permittee shall notify CDFW immediately in writing.</u></p>		
<p>Bio-Reptile-5 - Trash/Predation: Caltrans must implement measures to reduce the attractiveness of job sites to common raven, and other predators and scavengers by controlling trash and educating workers. <u>Additionally, trash receptacles installed within the rest area should be designed to have locking lids to deter common raven and other scavengers from being able to access the contents of the receptacle. Signage should be installed to encourage use of the trash cans. When the rest area is in operation, trash should be removed regularly so that it does not spill out of the receptacle.</u></p>	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>