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In Reply Refer To:  
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December 5, 2022  
*Sent by email*

**Subject: Notice of Preparation of a Draft Environmental Impact Report I-215/Keller Road New Interchange Project, State Clearinghouse No. 2022090376**

Dear Adam Compton:

The U.S. Fish and Wildlife Service (Service) and the California Department of Fish and Wildlife (CDFW), hereafter referred to jointly as the Wildlife Agencies, received the Notice of Preparation (NOP) for a Draft Environmental Impact Report (DEIR) for the I-215/Keller Road New Interchange Project (Project) on September 21, 2022, from the California Department of Transportation (Caltrans). The Wildlife Agencies appreciate the time extension to submit comments until December 5, 2022, and thank you for the opportunity to provide comments and recommendations regarding Project activities that may affect public trust resources.

## **WILDLIFE AGENCIES' ROLES**

The primary concern and mandate of the Service is the protection of fish and wildlife resources and their habitats. The Service has legal responsibility for the welfare of migratory birds, anadromous fish, and endangered animals and plants occurring in the United States. The Service is also responsible for administering the Federal Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 et seq.). CDFW is a trustee agency under the California Environmental Quality Act (CEQA) and is responsible for ensuring appropriate conservation of fish and wildlife resources including rare, threatened, and endangered plant and animal species, pursuant to the California Endangered Species Act, and administers the Natural Community Conservation Planning Program (NCCP).

The Service issued section 10(a)(1)(B) permits for the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) on June 22, 2004. CDFW also issued NCCP Approval and Take Authorizations for the MSHCP as per Section 2800 *et seq.*, of the California Fish and Game Code (FGC). The MSHCP established conservation programs to minimize and mitigate habitat loss and the incidental take of covered species in association with activities covered under the permits. Caltrans and City of Murietta are MSHCP Permittees. The Wildlife Agencies request that the Project implementation of the MSHCP be addressed in the DEIR as discussed below.

## **PREVIOUS COMMUNICATION**

The Wildlife Agencies received the Caltrans Natural Environmental Study (NES) on August 23, 2021, and provided comments on October 21, 2021. A meeting was held on September 16, 2021, between the Western Riverside County Regional Conservation Authority, City of Murrieta, Caltrans, and the Wildlife Agencies to discuss the NES and Project MSHCP implementation. The Wildlife Agencies also provided comments on the Western Riverside County Multiple Species Habitat Conservation Plan Consistency Analysis document for the Project on January 15, 2020.

## **PROJECT LOCATION**

The proposed Project site is located on Interstate 215 (I-215), approximately two miles north of Clinton Keith Road and 1 mile south of Scott Road. The Project limits are bounded by Zeiders Road to the west and Whitewood Road to the east along Keller Road, and for one mile north and south of Keller Road along I-215 in the Cities of Murrieta and Menifee.

## **PROJECT DESCRIPTION**

The proposed Project is a new, full interchange with auxiliary lanes at I-215 and Keller Road in Riverside County, California. The NOP and NES identify four construction alternatives that may be considered in the DEIR: Alternative 1, No-build Alternative; Alternative 2, Spread Diamond Interchange; Alternative 3, Partial Cloverleaf Interchange, and Alternative 5, Compact Diamond. Alternative 4, Modified Partial Cloverleaf, has been withdrawn from consideration. A preferred alternative is not identified in the NES. The Project also includes the construction of Warner Lane just east of the interchange. All three of the proposed build alternatives include the construction of a new road (Warner Lane NES, Figure 14) in Criteria Cell 5256 and extend into MSHCP Proposed Constrained Linkage 16 in their southern extent.

South of Keller Road, the Project falls within Cell Group Y which consists of Criteria Cells 5255, 5256, 5358 and 5361 and contains the MSHCP Proposed Constrained Linkage 16. The MSHCP describes Proposed Constrained Linkage 16 as “an unnamed blueline drainage connecting Proposed Linkage 8 in the west with Proposed Core 2 (Antelope Valley) in the east. The Linkage provides Habitat for species and provides for movement of species. The Linkage likely provides for movement of common mammals such as bobcat. Existing urban Development and agricultural use constrain the Linkage along its entire length, and the Linkage is surrounded by a city-designated planned land use. Species movement through the Linkage may also be affected by the intersection of the Linkage with I-215. Therefore, treatment and management of edge conditions along this Linkage will be necessary to ensure that it provides Habitat and movement functions for species using the Linkage.” (MSHCP, Volume 1, page 3-88). MSHCP planning species identified for Proposed Constrained Linkage 16 include Quino checkerspot butterfly, coastal California gnatcatcher, and bobcat.

## **COMMENTS AND RECOMMENDATIONS**

Caltrans District 8 has requested comments to inform the Draft Environmental Impact Report (DEIR) which will identify the proposed Project's direct, indirect, and cumulative environmental impacts, discuss alternatives, and propose mitigation measures that avoid, minimize, or offset significant environmental impacts.

The Wildlife Agencies offer these comments and recommendations below to assist the Caltrans in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources. The comments and recommendations are also offered to ensure that the DEIR provides sufficient information for Wildlife Agencies to adequately review and comment on the proposed Project. The Wildlife Agencies recommend that the forthcoming DEIR address the following:

### **Alternatives Analysis**

As Stated above all three design alternatives overlap with PLC 16. Caltrans and the City of Murrieta have committed to Project design features to minimize Project effects to the existing function of PLC 16. Design features discussed at meetings with the Wildlife Agencies focused on reducing light and noise impacts to the wildlife crossing through incorporation of design features such as solid walls, berms, and minimizing changes to the existing culvert. For the crossing to function as envisioned in the MSHCP, a larger undercrossing or overcrossing will be required.

All three build alternatives also require the construction Warner Lane in Criteria Cell 5256 south of Keller Road. Planned roadways in the Criteria Cells are addressed MSHCP Section 7.3.5 and depicted on Figure 7-1. Only planned roads are allowed Covered Activities in the Criteria Cells. Warner Lane is not depicted on Figure 7-1, not a Planned Roadway and therefore is not a Covered Activity. Proposed Warner Lane is not consistent with the MSHCP. We encourage Caltrans and the City of Murrieta to include an alternative that is consistent with the MSHCP as adopted. Warner Lane and MSHCP implementation are discussed further below.

### **Western Riverside County Multiple Species Habitat Conservation Plan**

The proposed Project occurs within the MSHCP area and is subject to the provisions and policies of the MSHCP as described above. MSHCP Permittees need to demonstrate that their discretionary actions are consistent with the MSHCP, the Permits, and the Implementing Agreement. Caltrans is the Lead Agency working on behalf of the local Sponsor, City of Murrieta (City). Both are MSHCP permittees. The MSHCP and City Resolution No. 03-1246 require that their discretionary actions adhere to the following:

1. Pay Local Development Mitigation Fees and other relevant fees as set forth in Section 8.5 of the MSHCP.
2. Demonstrate compliance with the policies for 1) compliance with the Urban/Wildlands Interface Guidelines as set forth in Section 6.1.4 of the MSHCP; 2) Planned Roads Within the

Criteria Area Section of 7.3.5 MSHCP, Section 7.5 including Guidelines for the Siting of Planned Roads Within the Criteria Area and Public/Quasi-Public Lands (MSHCP Section 7.5.1), and Guidelines for Construction of Wildlife Crossings (MSHCP 7.5.2) and 3) compliance with the Best Management Practices and the siting, construction, design, operation and maintenance guidelines as set forth in Section 7.0 and Appendix C of the MSHCP.

Please include a discussion of the Project and its consistency with Covered Activities (Section 7.3 of the MSHCP) and specifically Existing Roads Within the Criteria Area (Section 7.3.4), Planned Roads Within the Criteria Area and Public/Quasi-Public Lands (MSHCP Section 7.5.1), and Planned Roads Within the Criteria Area (7.3.5) in the DEIR. Roadways other than those identified in Section 7.3.5 of the MSHCP are not covered without an amendment to the MSHCP in accordance with the procedures described in MSHCP Section 6.10. The Wildlife Agencies recommend that Caltrans and the City of Murrieta review MSHCP Section 7.3.5 and include in the DEIR information that demonstrates that Project-related roads are MSHCP covered activities. The DEIR should also discuss design and siting information for all proposed roads to ensure that the roads are sited, designed, and constructed in a manner consistent with MSHCP conservation objectives.

As discussed above, Warner Lane is not a planned road in the Criteria Cells (MSHCP Section 7.3.5), nor is it depicted on MSHCP Figure 7-1, and is not an MSHCP covered activity. Also, problematically, proposed Warner Lane is in the central and northern portion of Criteria Cell 5256 within Cell Group Y and is needed for conservation as described below. The conservation description for Cell Group Y is that conservation will contribute to assembly of Proposed Core 2 and Proposed Constrained Linkage 16 and will range from 55-65 percent of the Cell Group focusing in the eastern and western central portions of the Cell Group.

To meet the low range of the 55 percent conservation described for the Cell Group approximately 290 acres are to be conserved and approximately 355 acres would be available for development. To date, approximately 83 acres have been conserved and 365 acres have been developed within the Cell Group. Even if all remaining land in the Cell Group is conserved, the minimum conservation requirement for this Cell Group (55 percent) cannot be met. Thus, all remaining undeveloped area is needed for conservation. The Warner Lane footprint should be conserved to reduce the conservation shortfall in this Cell Group.

As discussed above, the three build alternatives are not consistent with the MSHCP as written. The Wildlife Agencies recommend that the Project either be redesigned such that Warner Lane is no longer needed, or a Criteria Refinement and/or MSHCP Amendment is completed to address the conservation object of Cell Group Y and the need for Warner Lane.

Urban/ Wildlands Interface Guidelines, MSHCP Section 6.1.4:

As the MSHCP Conservation Area is assembled, boundaries are established between development and MSHCP Conservation Areas. Development near the MSHCP Conservation Area may result in edge effects that will adversely affect biological resources within the MSHCP Conservation Area. To minimize edge effects and maintain conservation values within the Conservation Areas, the City and Caltrans are required to implement the Urban/Wildlands Interface Guidelines (MSHCP Section 6.1.4) to minimize harmful effects from drainage, toxics, lighting, noise, invasives, barriers, and grading/land development. The MSHCP identifies that Project review and impact mitigation be provided through the CEQA process to address the Urban/Wildland Interface guidelines. that the DEIR the indirect effects discussed in the Urban/Wildland Interface guidelines.

The Wildlife Agencies recommend that the DEIR include an analysis edge effects related to project construction and operation, such as noise, lighting, trespass, and toxics and that Project specific mitigation measures to avoid and minimize any effects be included in the DEIR. Avoidance and minimization measures can include, but are not limited to:

1. *Lighting Plan*: A Lighting Plan that identifies existing ambient lighting conditions, analyzes the Project lighting impacts on the adjacent Conservation Area, and demonstrates that the proposed lighting plan will not significantly increase the lighting on the Conservation Area. The Lighting Plan should identify measures that address light and glare from interior and exterior building lighting, safety and security lighting, and vehicular traffic accessing the site at a minimum.
2. *Noise Plan*: A Noise Plan to avoid and minimize noise impacts based on an assessment of Project noise impacts on adjacent conservation areas during construction and post development. The MSHCP identifies that Project noise impacts do not exceed the residential standards within the Conservation Areas.
3. *Landscaping Plan*: A Landscaping plan that includes the use of native plant material on the Project site and avoids the use of invasive plant species identified in Table 6-2 of the MSHCP.
4. *Fencing Plan*: A Barrier and Fencing plan that provides specific details designed to minimize unauthorized public access, domestic animal predation, illegal trespass, and dumping in the MSHCP Conservation Area (such as block walls along areas directly adjacent to potential conservation areas) and
5. *Best Management Practices*: The DEIR should incorporate the guidance in MSHCP Section 7.0 and Appendix C of the MSHCP for addressing Best Management Practices.

**Stephens' Kangaroo Rat Habitat Conservation Plan**

The Project occurs within the Stephens' kangaroo rat (*Dipodomys stephensi*) Habitat Conservation Plan (SKR HCP) fee area boundary, SKR HCP plan area map available here:

<https://rchca.us/DocumentCenter/View/200/SKR-Plan-Area>. State and federal authorizations

associated with the SKR HCP provide take authorization for Stephens' kangaroo rat within its boundaries. Payment of the SKR HCP fee is required.

## **CDFW ADDITIONAL RECOMMENDATIONS**

### **Objectives**

Section 15124(b) of the CEQA Guidelines requires that the project description contain a clear statement of the project objectives. It is the policy of the State of California to protect, restore, and enhance the functioning of fish, wildlife, and habitat connectivity in connection with the planning, construction, and improvement of transportation infrastructure throughout the state and, where feasible, the operation and maintenance of transportation infrastructure throughout the state (Assembly Bill No. 2344, 2021-2022 session). CDFW recommends that the DEIR should include an objective to protect, restore, and enhance wildlife and habitat connectivity. To that end we recommend that Caltrans include the creation of a larger facility needed for the full function of PLC 16 in its planning and project development processes.

### **Assessment of Biological Resources**

Section 15125(c) of the CEQA Guidelines state that knowledge of the regional setting of a project is critical to the assessment of environmental impacts and that special emphasis should be placed on environmental resources that are rare or unique to the region. To enable CDFW staff to adequately review and comment on the project, the DEIR should include a complete assessment of the flora and fauna within and adjacent to the Project footprint, with particular emphasis on identifying rare, threatened, endangered, and other sensitive species and their associated habitats.

CDFW recommends that the DEIR specifically include:

1. An assessment of the various habitat types located within the project footprint, and a map that identifies the location of each habitat type. CDFW recommends that floristic, alliance- and/or association-based mapping and assessment be completed following *The Manual of California Vegetation*, second edition (Sawyer et al. 2009<sup>1</sup>). Adjoining habitat areas should also be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions.
2. A general biological inventory of the fish, amphibian, reptile, bird, and mammal species that are present or have the potential to be present within each habitat type onsite and within adjacent areas that could be affected by the project. CDFW's California Natural Diversity Database (CNDDDB) in Sacramento should be contacted at (916) 322-2493 or [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov) or <https://wildlife.ca.gov/Data/CNDDDB/Maps-and-Data> to obtain current information on any previously reported sensitive species and habitat, including

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<sup>1</sup> Sawyer, J. O., T. Keeler-Wolf, and J. M. Evens. 2009. A manual of California Vegetation, 2<sup>nd</sup> ed. California Native Plant Society Press, Sacramento, California. <http://vegetation.cnps.org/>

Significant Natural Areas identified under Chapter 12 of the Fish and Game Code, in the vicinity of the proposed Project.

CDFW's CNDDDB is not exhaustive in terms of the data it houses, nor is it an absence database. CDFW recommends that it be used as a starting point in gathering information about the *potential presence* of species within the general area of the project site.

3. A complete, *recent* inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern (CSSC) and California Fully Protected Species (Fish & G. Code, § 3511). Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. Focused species-specific/MSHCP surveys, completed by a qualified biologist and 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 the Wildlife Agencies, where necessary. Note that CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.
4. 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 (CDFW 2018<sup>2</sup>).
5. Information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis on resources that are rare or unique to the region (CEQA Guidelines § 15125[c]).
6. A full accounting of all open space and mitigation/conservation lands within and adjacent to the Project.

### **Analysis of Direct, Indirect, and Cumulative Impacts to Biological Resources**

The DEIR should provide a thorough discussion of the direct, indirect, and cumulative impacts expected to adversely affect biological resources as a result of the Project. To ensure that Project impacts to biological resources are fully analyzed, the following information should be included in the DEIR:

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<sup>2</sup> CDFW, 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities, State of California, California Natural Resources Agency, Department of Fish and Wildlife: March 20, 2018 (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>)

1. A discussion of potential impacts from lighting, noise, human activity (e.g., recreation), defensible space, and wildlife-human interactions created by zoning of development projects or other project activities adjacent to natural areas, exotic and/or invasive species, and drainage. The latter subject should address Project-related changes on drainage patterns and water quality within, upstream, and downstream of the Project site, including: volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-Project fate of runoff from the Project site.
2. A discussion of potential indirect Project impacts on biological resources, including resources in areas adjacent to the project footprint, open space, adjacent natural habitats, riparian ecosystems, wildlife corridors, and designated and/or proposed reserve or mitigation lands (e.g., preserved lands associated with the MSHCP or other conserved lands).
3. An evaluation of impacts to on-site and adjacent open space lands from both the construction of the Project and any long-term operational and maintenance needs.
4. A cumulative effects analysis developed as described under CEQA Guidelines section 15130. The DEIR should analyze the cumulative effects of the plan's land use designations, policies, and programs on the environment. Please include all potential direct and indirect Project related impacts to riparian areas, wetlands, vernal pools, alluvial fan habitats, wildlife corridors or wildlife movement areas, aquatic habitats, sensitive species and other sensitive habitats, open lands, open space, and adjacent natural habitats in the cumulative effects analysis. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.

### **Mitigation Measures for Project Impacts to Biological Resources**

The DEIR should identify mitigation measures and alternatives that are appropriate and adequate to avoid or minimize potential impacts, to the extent feasible. Caltrans should assess all direct, indirect, and cumulative impacts that are expected to occur as a result of the implementation of the Project and its long-term operation and maintenance. When proposing measures to avoid, minimize, or mitigate impacts, CDFW recommends consideration of the following:

1. *Fully Protected Species*: Fully protected species may not be taken or possessed at any time. Project activities described in the DEIR should be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the Project area. CDFW also recommends that the DEIR fully analyze potential adverse impacts to fully protected species due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. CDFW recommends that the Lead Agency include in the analysis how appropriate avoidance, minimization, and mitigation measures will reduce indirect impacts to fully protected species.
2. *Sensitive Plant Communities*: CDFW considers sensitive plant communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and



associations with a statewide ranking of S-1, S-2, S-3, and S-4 should be considered sensitive and declining at the local and regional level. These ranks can be obtained by querying the CNDDDB and are included in *The Manual of California Vegetation* (Sawyer et al. 2009). The DEIR should include measures to fully avoid and otherwise protect sensitive plant communities from project-related direct and indirect impacts.

3. *California Species of Special Concern*: CSSC status applies to animals generally not listed under the federal Endangered Species Act or the CESA, but which nonetheless are declining at a rate that could result in listing, or historically occurred in low numbers and known threats to their persistence currently exist. CSSCs should be considered during the environmental review process. The DEIR should identify CSSC that have the potential to or have been documented to occur within or adjacent to the Project area.
4. *Mitigation*: CDFW considers adverse project-related impacts to sensitive species and habitats to be significant to both local and regional ecosystems, and the DEIR should include mitigation measures for adverse project-related impacts to these resources. Mitigation measures should emphasize avoidance and reduction of project impacts. For unavoidable impacts, onsite habitat restoration and/or enhancement, and preservation should be evaluated and discussed in detail. Where habitat preservation is not available onsite, offsite land acquisition, management, and preservation should be evaluated and discussed in detail.

The DEIR should include measures to perpetually protect the targeted habitat values within mitigation areas from direct and indirect adverse impacts in order to meet mitigation objectives to offset project-induced qualitative and quantitative losses of biological values. Specific issues that should be addressed include restrictions on access, proposed land dedications, long-term monitoring and management programs, control of illegal dumping, water pollution, increased human intrusion, etc.

If sensitive species and/or their habitat may be impacted from the Project, CDFW recommends the inclusion of specific mitigation in the DEIR. CEQA Guidelines section 15126.4, subdivision (a)(1)(8) states that formulation of feasible mitigation measures should not be deferred until some future date. The Court of Appeal in *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645 struck down mitigation measures which required formulating management plans developed in consultation with State and Federal wildlife agencies after Project approval. Courts have also repeatedly not supported conclusions that impacts are mitigable when essential studies, and therefore impact assessments, are incomplete (*Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d. 296; *Gentry v. City of Murrieta* (1995) 36 Cal. App. 4th 1359; *Endangered Habitat League, Inc. v. County of Orange* (2005) 131 Cal. App. 4th 777).

CDFW recommends that the DEIR specify mitigation that is roughly proportional to the level of impacts, in accordance with the provisions of CEQA (CEQA Guidelines, §§ 15126.4(a)(4)(B), 15064, 15065, and 16355). The mitigation should provide long-term conservation value for the suite of species and habitat being impacted by the Project.

Furthermore, in order for mitigation measures to be effective, they need to be specific, enforceable, and feasible actions that will improve environmental conditions.

5. *Habitat Revegetation/Restoration Plans*: Plans for restoration and revegetation should be prepared by persons with expertise in southern California ecosystems and native plant restoration techniques. Plans should identify the assumptions used to develop the proposed restoration strategy. Each plan should include, at a minimum: (a) the location of restoration sites and assessment of appropriate reference sites; (b) the plant species to be used, sources of local propagules, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) a local seed and cuttings and planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity. Monitoring of restoration areas should extend across a sufficient time frame to ensure that the new habitat is established, self-sustaining, and capable of surviving drought.

CDFW recommends that local onsite propagules from the Project area and nearby vicinity be collected and used for restoration purposes. Onsite seed collection should be initiated in advance of project impacts in order to accumulate sufficient propagule material for subsequent use in future years. Onsite vegetation mapping at the alliance and/or association level should be used to develop appropriate restoration goals and local plant palettes. Reference areas should be identified to help guide restoration efforts. Specific restoration plans should be developed for various project components as appropriate.

Restoration objectives should include protecting special habitat elements or re-creating them in areas affected by the Project; examples could include retention of woody material, logs, snags, rocks, and brush piles.

6. *Nesting Birds and Migratory Bird Treaty Act*: Please note that it is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Fish and Game Code sections 3503, 3503.5, and 3513 afford protective measures as follows: Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird as designated in the Migratory Bird Treaty Act or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Treaty Act.

Birds have been documented nesting outside of historic nesting bird period. For example, owls nesting in January and September, hummingbirds nesting in January and February, and

red-tailed hawks nesting in January and February. Given documented excursions from the proposed nesting bird season, we recommend the completion of nesting bird survey regardless of time of year to ensure compliance with all applicable laws pertaining to nesting birds and birds of prey. Nesting bird surveys should not be limited to work during a specific time frame due to recent changes in timing of avian breeding activity.

CDFW recommends that the DEIR include the results of avian surveys, as well as specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but not be limited to: project phasing and timing, monitoring of project-related noise (where applicable), sound walls, and buffers, where appropriate. The DEIR should also include specific avoidance and minimization measures that will be implemented should a nest be located within the project site. If pre-construction surveys are proposed in the DEIR, the CDFW recommends that they be required no more than three (3) days prior to vegetation clearing or ground disturbance activities, as instances of nesting could be missed if surveys are conducted sooner.

7. *Moving out of Harm's Way*: To avoid direct mortality, CDFW recommends that the lead agency condition the DEIR to require that a CDFW-approved qualified biologist be retained to be onsite prior to and during all ground- and habitat-disturbing activities to move out of harm's way special status species or other wildlife of low or limited mobility that would otherwise be injured or killed from project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise be injured or killed, and individuals should be moved only as far as necessary to ensure their safety (i.e., CDFW does not recommend relocation to other areas). Furthermore, it should be noted that the temporary relocation of onsite wildlife does not constitute effective mitigation for the purposes of offsetting project impacts associated with habitat loss.
8. *Translocation of Species*: CDFW generally does not support the use of relocation, salvage, and/or transplantation as mitigation for impacts to rare, threatened, or endangered species as studies have shown that these efforts are experimental in nature and largely unsuccessful.

### **California Endangered Species Act**

CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to CESA. CDFW recommends that a CESA Incidental Take Permit (ITP) be obtained if the Project has the potential to result in "take" (California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill") of State-listed CESA species, either through construction or over the life of the project. It is the policy of CESA to conserve, protect, enhance, and restore State-listed CESA species and their habitats.

CDFW encourages early consultation, as significant modification to the proposed Project and avoidance, minimization, and mitigation measures may be necessary to obtain a CESA ITP. The California Fish and Game Code requires that CDFW comply with CEQA for issuance of a CESA ITP. CDFW therefore recommends that the DEIR addresses all Project impacts to listed species

and specifies a mitigation monitoring and reporting program that will meet the requirements of CESA.

*Crotch's Bumblebee (Bombus crotchii)*. The Project may cause direct mortality to Crotch's bumblebee or injury of adults, eggs, and larva, burrow collapse, nest abandonment, and reduced nest success. Suitable Crotch's bumblebee habitat is far ranging as they are generalist foragers and can utilize many different plant and vegetation communities. Suitable habitat includes areas of grasslands, coastal sage scrub, and arid desert landscape that contain requisite habitat elements, such as small mammal burrows.

**Protection Status.** A petition to list the Crotch's bumble bee as an endangered species under CESA is currently pending before the California Fish and Game Commission (Commission) (Cal. Reg. Notice Register 2018, No. 45-Z, pp. 1986–1987 [November 9, 2018]). The Commission designated the Crotch's bumble bee as a candidate species under CESA in June 2019 (Cal. Reg. Notice Register 2019, No. 26-Z, pp. 954–955 [June 28, 2019]). The Commission's decision to designate the Crotch's bumble bee as a candidate species is the subject of a pending legal challenge (Almond Alliance of California v. Fish and Game Commission [2022] 79 Cal. App. 5th 337, pet. for review pending, S275412). On September 30th, 2022, candidacy was reinstated for the four bumble bee species petitioned for listing—Franklin's, Crotch's, western, and suckle cuckoo.

**Disclosure and Analysis.** The DEIR should include project-level surveys in areas of impact with suitable habitat for Crotch's bumblebee. Surveys should be performed by a qualified entomologist familiar with the species behavior and life history to determine the presence/absence of Crotch's bumble bee. Surveys should be conducted during flying season when the species is most likely to be detected above ground, between March 1 to September 1 (Thorp et al. 1983).

**Mitigation.** If avoidance is not feasible and Crotch's bumblebee is present, the DEIR should specify mitigation for impacts to Crotch's bumblebee. A qualified biologist should identify and record the locations of all nests in or adjacent to the Project site. CDFW recommends the DEIR be conditioned with a measure where a 50-foot buffer zone should be established around nests where no work should occur. If impacts are unavoidable the Applicant should consult CDFW to see if a CESA ITP is required. Compensatory mitigation should also be provided to offset loss of habitat and vegetation communities associated with Crotch's bumblebee.

### **Lake and Streambed Alteration Program**

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. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: substantially divert or obstruct the natural flow of any river, stream, or lake; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit debris, waste or other materials that could pass into any river, stream, or lake. Please note that "any river, stream or

lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow.

Upon receipt of a complete notification, CDFW determines if the proposed Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify your Project that would eliminate or reduce harmful impacts to fish and wildlife resources.

CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code § 21065). To facilitate issuance of an LSA Agreement, if necessary, the DEIR should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the proposed Project may be required to avoid or reduce impacts to fish and wildlife resources. To submit a Lake or Streambed Alteration notification, please go to <https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS>.

## **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 CNDDDB. Information can be submitted online or via completion of the CNDDDB field survey form 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 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**

The Wildlife Agencies appreciate the opportunity to comment on the NOP of a DEIR for the I-215/Keller Road New Interchange Project in the City of Murrieta and Caltrans District 8 (SCH No. 2022090376) and request that Caltrans address our comments and recommendations in the

DEIR. Questions regarding this letter or further coordination should be directed to John M. Taylor of the Service at [john\\_m\\_taylor@fws.gov](mailto:john_m_taylor@fws.gov), and Carly Beck, CDFW Environmental Scientist, at [carly.beck@wildlife.ca.gov](mailto:carly.beck@wildlife.ca.gov).

Sincerely,

**Karin**  
**Cleary-Rose**  
for  
Rollie White  
Assistant Field Supervisor  
U.S. Fish and Wildlife Service

Digitally signed by  
Karin Cleary-Rose  
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*Kim Freeburn*  
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Kimberly Freeburn  
Environmental Program Manager  
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