



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Ave
Fresno, California 93710
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



April 26, 2023

Javier Almaguer
California Department of Transportation
500 South Main St
Bishop, California 93514

**Subject: Southbound State Route 99 and Westbound State Route 58 Connector
Project (Project)
Notice of Preparation
State Clearinghouse No: 2023030703**

Dear Javier Almaguer:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) from the California Department of Transportation (Caltrans), as lead agency, for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under 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 and Game Code, §§ 711.7, 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,

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

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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 and Game 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 and Game Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

In this role, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (e.g., CEQA), focusing specifically on project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

Bird Protection: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include, sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

Fully Protected Species: CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish designated by statute as "fully protected" pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Take of any fully protected species is prohibited and CDFW cannot authorize their incidental take.

Unlisted Species: Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened (E, R, or T) on any State or Federal list to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for E, R, or T, as specified in the CEQA Guidelines section 15380, CDFW recommends it be fully considered in the environmental analysis for the Project.

PROJECT DESCRIPTION SUMMARY

Proponent: California Department of Transportation (Caltrans)

Objective: The Project proposes to construct a freeway-to-freeway connector highway interchange of State Route (SR) 58 and SR 99. The connector would start from southbound SR 99 freeway off-ramp just north of Stockdale Highway forming a direct connector on a curved alignment in the northwest quadrant of the interchange moving to westbound SR 58

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on the new freeway alignment. The connector would provide a final connector movement between SR 99 and SR 58 at the freeway interchange that will allow for truck and auto traffic to avoid the local street system for the transition from one high to another.

Location: The proposed Project is located at the SR 58 and SR 99 freeway interchange near Stockdale Highway in the City of Bakersfield in Kern County, California. The Project occurs in Sections 23 and 26 of Township 29 South and Range 27 East in the Mount Diablo Base and Meridian within the Oildale U. S. Geological Survey 7.5-minute quadrangle map.

Timeframe: No timeframe provided.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations 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. The attached Mitigation Monitoring and Reporting Program (MMRP) provides a summary of CDFW's additional impact minimization, mitigation and monitoring recommendations that are described below. Editorial comments or other suggestions may also be included to improve the document.

The NOP indicates that Caltrans will be preparing a Supplemental Environmental Impact Report/Environmental Assessment (EIR/EA) to the Centennial Corridor Project. CDFW's comments and recommendations are built on the information provided in the final EIR/EA for the Project. Although the Project will be implemented within the developed part of the City of Bakersfield and in an area recently disturbed for construction of the SR 58/SR99 interchange, the Project site and/or surrounding area is known to or has the potential to support special-status species. These resources may need to be evaluated and addressed prior to any approvals that would allow ground disturbing activities. CDFW is concerned regarding potential impacts to special-status species including, but not limited to, the State species of special concern burrowing owl (*Athene cunicularia*), the federally endangered and State threatened San Joaquin kit fox (*Vulpes macrotis mutica*), and the State species of special concern Bakersfield legless lizard (*Anniella grinnelli*).

I. Environmental Setting and Related Impact

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or the United States Fish and Wildlife Service (USFWS)?

COMMENT 1: Burrowing Owl (BUOW)

Issue: The Project site is within the known range of BUOW and based on our review of aerial imagery, BUOW has the potential to occur within or adjacent to the Project site. BUOW inhabit open grassland or adjacent canal banks, rights-of-ways, vacant

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lots, containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover (Gervais et al. 2008). BUOW rely on burrow habitat year-round for their survival and reproduction.

Habitat loss and degradation are considered the greatest threats to BUOW in California (Gervais et al. 2008). Potentially significant direct impacts associated with Project activities include burrow collapse, inadvertent entrapment, nest abandonment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals. In addition, and as described in CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), excluding and/or evicting BUOW from their burrows is considered a potentially significant impact under CEQA. Construction activities near active burrows could result in potentially significant impacts to nesting or overwintering owls.

Recommended Avoidance, Minimization, and/or Mitigation Measures for BUOW:

CDFW recommends that a qualified biologist surveys for suitable BUOW habitat features within 500 feet of the Project site (e.g., burrows). If suitable habitat features are present, CDFW recommends the presence/absence of BUOW be assessed by having a qualified biologist conduct surveys following guidelines by the California Burrowing Owl Consortium (CBOC 1993) and CDFW (CDFG 2012) as part of the biological studies conducted in support of the Supplemental EIR/EA. Specifically, CBOC and CDFW recommend three or more surveillance surveys conducted during daylight with each visit occurring at least three weeks apart during the peak breeding season (April 15 to July 15), when BUOW are most detectable.

CDFW recommends no-disturbance buffers, as outlined in the "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), be implemented prior to and during any ground-disturbing activities. Specifically, CDFW's Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Medium	High
Nesting sites	April 1-Aug 15	200	500	500
Nesting sites	Aug 16-Oct 15	200	200	500
Nesting sites	Oct 16-Mar 31	50	100	500

COMMENT 2: San Joaquin kit fox (SJKF)

Issue: The Project site is within the known geographic range of SJKF, and multiple historical and recent occurrences have been documented within the City of

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Bakersfield (CDFW 2023), including the SR 99/SR 204 interchange located less than one mile north of the proposed Project site. SJKF population sizes are known to fluctuate over time, and absence in any one year does not necessarily indicate a negative finding. Particularly in Kern County, SJKF are known to den in right of ways, vacant lots, parks, landscaped areas, golf courses, oil fields, etc. SJKF may be attracted to the Project site due to the type and level of ground disturbing activities and the loose, friable soils resulting from intensive ground disturbance. If present within or near the Project site, Project activities have the potential to significantly impact local SJKF populations. Any take of SJKF without appropriate incidental take authorization would be a violation of Fish and Game Code.

Recommended Avoidance, Minimization, and/or Mitigation Measures for SJKF:

CDFW recommends that a qualified biologist assess the presence/absence of SJKF by having qualified biologists conduct focused surveys to detect SJKF and their sign in within the Project site and a 500-foot buffer of the Project site as part of the biological studies conducted in support of the Supplemental EIR/EA. CDFW recommends implementing no-disturbance buffers, as described in the USFWS' "Standardized Recommendations for Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance" (2011) (USFWS Protocol) around potentially suitable or known SJKF den sites, as summarized in the table below. If the no-disturbance buffers outlined in the USFWS Protocol for SJKF are not feasible, CDFW recommends that consultation with CDFW occur to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the issuance of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Den Type	Buffer (feet)	Protective Measure
Potential	50	No-disturbance markers
Atypical	50	No-disturbance markers
Known	100	Exclusionary fencing
Natal/Pupping	Contact USFWS and CDFW	

COMMENT 3: Bakersfield legless lizard (BALL)

Issue: The Project site is within the known geographic range of BALL, and multiple historical and recent occurrences have been documented within the City of Bakersfield (CDFW 2023). Like most legless lizards, BALL occurs in sparsely vegetated areas with moist and friable soil. It can be found under surface objects such as rocks, boards, wood piles, leaf litter. This species has a very narrow distribution in the southern San Joaquin Valley and into the City of Bakersfield (Papenfuss and Parham 2013). Much of this lizard's habitat has been lost due to agriculture, housing development, sandmining, and other human land development.

Construction disturbances could potentially include loss of habitat, inadvertent entrapment, and potential direct mortality of individuals due to habitat removal,

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crushing by construction equipment, or suffocation due to burial or excessive dust. Project activities have the potential to significantly impact BALL, if present.

Recommended Avoidance, Minimization, and/or Mitigation Measures for BALL:

CDFW recommends that a qualified biologist conduct focused surveys for BALL and its requisite habitat features to evaluate potential impacts resulting from ground- and vegetation-disturbance as part of the biological studies conducted in support of the Supplemental EIR/EA. Avoidance whenever possible is encouraged via delineation and observance of a 50-foot no-disturbance buffer around burrows. If BALL is observed in the Project site during Project activities, CDFW recommends that Caltrans stop work in their immediate vicinity and individuals be allowed to leave the Project site on their own accord. Alternatively, a qualified biologist with appropriate authorization can move them out of harm's way and to a suitable location.

II. Editorial Comments and/or Suggestions

CDFW requests that the Supplemental EIR/EA fully identify potential impacts to biological resources, including the above-mentioned species. To adequately assess any potential impacts to biological resources, focused biological surveys should be conducted by qualified wildlife biologists/botanists during the appropriate survey period(s) for each species in order to determine whether any special-status species and/or suitable habitat features may be present within the Project site. Properly conducted biological surveys, and the information assembled from them, are essential to identify any mitigation, minimization, and avoidance measures, the need for additional or protocol level surveys, and/or to identify any Project-related impacts under CESA and other species of concern. CDFW recommends the Supplemental EIR/EA address potential impacts to these species and provide measurable mitigation measures that, as needed, will reduce impacts to less than significant levels. Information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/SurveyProtocols>).

Nesting birds: CDFW encourages that Project implementation occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February 1 through September 15), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e. nest destruction), noise,

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vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist counsel and support any variance from these buffers and notify CDFW in advance of implementing a variance.

Cumulative Impacts: CDFW recommends that a cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the Project, including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the Project, even if those impacts are relatively small (i.e. less than significant). Cumulative impacts should be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and should be focused specifically on the resource, not the project. An appropriate resource study area should be identified and utilized for this analysis. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to CNDDDB. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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FILING FEES


If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required for the underlying Project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish and Game Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the Project to assist Caltrans in identifying and mitigating the Project's impacts on biological resources.

If you have any questions, please contact Mindy Trask, Senior Environmental Scientist (Specialist), at the address provided on this letterhead, by telephone at (559) 939-0282, or by electronic mail at Mary.Trask@wildlife.ca.gov.

Sincerely,

DocuSigned by:

EA83F09FE08945A...
Julie A. Vance
Regional Manager

ATTACHMENTS

Literature Cited

Recommended Mitigation Monitoring and Reporting Program (MMRP)

ec: State Clearinghouse, Governor's Office of Planning and Research
State.Clearinghouse@opr.ca.gov.

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LITERATURE CITED

California Burrowing Owl Consortium (CBOC). 1993. Burrowing owl survey protocol and mitigation guidelines. April 1993.

California Department of Fish and Game (CDFG). 2012. Staff Report on Burrowing Owl Mitigation. California Department of Fish and Game. March 7, 2012.

California Department of Fish and Wildlife (CDFW). 2023. Biogeographic Information and Observation System, Version 6 (BIOS 6). <https://www.wildlife.ca.gov/Data/BIOS> (accessed April 10 2023).

Gervais, J.A., D.D. Rosenberg, and L.A. Comrack. Burrowing Owl (*Athene cunicularia*) in Shuford, W.D. and T. Gardali, editors. 2008. *California Bird Species of Special Concern: A ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern*. In: California. Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento, California, USA.

Papenfuss, T. J. and J. F. Parham. 2013. *Four New Species of California Legless Lizards (Anniella)*. Breviora, Number 536:1-17

United States Fish and Wildlife Service (USFWS). 2011. Standardized Recommendations for Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance. United States Fish and Wildlife Service. January 2011.

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**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
 RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)**

**PROJECT: Caltrans Southbound State Route 99 and Westbound State Route 58
 Connector Project**

CDFW provides the following measures be incorporated into the MMRP for the Project:

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Surveys for burrowing owl (BUOW)	
Surveys for San Joaquin kit fox (SJKF)	
Potential SJKF Section 2081 Incidental Take Permit	
Surveys for Bakersfield legless lizard (BALL)	
Surveys for nesting birds	
<i>During Construction</i>	
BUOW no-disturbance buffer	
SJKF no-disturbance buffer	
Moving BALL out of harm's way	
Nesting bird no-disturbance buffers	