



DEPARTMENT OF FISH AND WILDLIFE

Central Region
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August 30, 2023

Matt Fowler
Environmental Branch Chief
District 5 Environmental Division
California Department of Transportation
50 Higuera Street
San Luis Obispo, CA 93401

Subject: State Route 46 East/Union Road Intersection Improvements (Project)
Initial Study with Proposed Mitigated Negative Declaration/Environmental
Assessment
SCH No. 2023080075

Dear Matt Fowler:

The California Department of Fish and Wildlife (CDFW) received an Initial Study with Proposed Mitigated Negative Declaration/Environmental Assessment (Initial Study) from Lead Agency for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines¹.

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

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the state (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Id., § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As

¹ CEQA is codified in the California Public Resources Code in Section 2100 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

Matt Fowler
California Department of Transportation
August 30, 2023
Page 2

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

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.

Fully Protected Species: CDFW has jurisdiction over fully protected species of birds, mammals, amphibians and reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Take of any fully protected species was previously prohibited and CDFW was not able to authorize their incidental take. Senate Bill No. 147, which became effective on July 1, 2023, amended Fish and Game Code sections 3511, 4700, 5050, and 5515 to authorize CDFW to issue a permit under CESA that authorizes the take of a fully protected species resulting from impacts attributable to the implementation of specified projects, if certain conditions are satisfied.

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 (California Code of Regulations, Title 14, Chapter 3, § 15380), CDFW recommends it be fully considered in the environmental analysis for this Project.

PROJECT DESCRIPTION SUMMARY

Proponent: State of California Department of Transportation (Caltrans) and City of Paso Robles (City).

Objective: Caltrans and the City propose to construct, in two phases, an overcrossing and partial cloverleaf interchange at the intersection of State Route 46 East and Union Road/Paso Robles Boulevard. Phase 1 of the Project would convert a portion of State Route 46 from an at-grade intersection at Union Road/Paso Robles Boulevard into a new grade-separated overcrossing with an associated north-south extension of Union Road over State Route 46 (referred to as Union Road Overcrossing/Extension). Phase 2 of the Project would expand upon Phase 1 and would include the construction of a partial cloverleaf interchange with access ramps.

Matt Fowler
California Department of Transportation
August 30, 2023
Page 3

Location: The Project site is in north-central San Luis Obispo County, from post miles 30.7 through 32.4 on State Route 46 East at Union Road, in the City of Paso Robles.

Timeframe: The expected start of construction of Phase 1 is the federal fiscal year 2026 to 2027, and construction is expected to occur in several stages over a 24-month period. The expected start of construction of Phase 2 is 2046, and construction is expected to occur in several stages over a 24-month period.

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. 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.

Based on review of habitat conditions at and near the Project and proposed Project activities in the Initial Study, CDFW is concerned regarding potential impacts to the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), State fully protected golden eagle (*Aquila chrysaetos*), State candidate Crotch's bumble bee (*Bombus crotchii*), State species of Greatest Conservation Need, federal candidate Western monarch (*Danaus plexippus plexippus*), special status plants, and the following State Species of Special Concern: pallid bat (*Antrozous pallidus*), Townsend's big-eared bat (*Corynorhinus townsendii*), western red bat (*Lasiurus blossevillii*), and western mastiff bat (*Eumops perotis californicus*).

I. Environmental Setting and Related Impacts

COMMENT 1: San Joaquin kit fox (SJKF)

Issue: The Initial Study and the Project's Natural Environment Study (NES) identify the potential presence of SJKF in the Project site and describes impacts to potentially suitable denning and foraging habitat. However, some of the listed avoidance and minimization measures, such as the excavation of potential SJKF dens, would be considered take under the State and Federal Endangered Species Acts. Any take of SJKF without appropriate incidental take authorization from CDFW would be a violation of Fish and Game Code.

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

CDFW advises that a qualified biologist assess presence/absence of SJKF by conducting surveys following the USFWS "Standardized Recommendations for Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance" (USFWS

Matt Fowler
California Department of Transportation
August 30, 2023
Page 4

2011). Specifically, CDFW advises conducting these surveys in all areas of potentially suitable habitat within 250 feet of Project activities no less than 14 days and no more than 30 days prior to the beginning of ground-disturbing activities, searching for potential dens and sign of SJKF presence. If this species is detected during surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization prior to any ground-disturbing activities may be warranted. Take authorization would occur through issuance of an Incidental Take Permit by CDFW, pursuant to Fish and Game Code section 2081, subdivision (b).

COMMENT 2: Golden eagle (GOEA)

Issue: The fully protected golden eagle has the potential to nest and/or forage in the Project vicinity (CDFW 2023a). Table 2.54 in the Initial Study and Table 2 in the NES identify that a golden eagle nest is located two miles from the Project site. However, an occurrence record is located less than half-mile from the northern portion of the Project site, along Huer Huero Creek (CDFW 2023 and internal data). Because Project activities will involve a level of disturbance that is greater than standard traffic and urban activities in the region, CDFW considers it possible that the Project activities would represent a novel stimulus which could result in nest abandonment if they occur within half-mile of an active GOEA nest. If nesting in or near the Project site, Project activities have the potential to result in nest abandonment and/or loss of foraging habitat, significantly impacting local nesting GOEA.

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

CDFW recommends that a qualified biologist conduct focused surveys for nesting golden eagles within the Project site and a half-mile buffer surrounding the Project site as part of the biological studies conducted in support of the Initial Study. Golden eagle nest occupancy surveys within the half-mile buffer are also recommended prior to Project activities that may take place during the nesting season. CDFW recommends that the surveys be conducted in accordance with protocols developed by the United States Fish and Wildlife Service (Pagel et al. 2010) for golden eagle. If surveys indicate the presence or potential presence of golden eagle nest activity, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization prior to any ground-disturbing activities may be warranted. Take authorization would occur through issuance of an Incidental Take Permit by CDFW, pursuant to Fish and Game Code section 2081, subdivision (b) and as authorized by Senate Bill 147.

COMMENT 3: Crotch's Bumble Bee (CBB)

Issue: CBB are known to inhabit areas of grasslands and scrub that contain requisite habitat elements for nesting, such as small mammal burrows and bunch/thatched grasses. As identified in the Initial Study, the Project site contains suitable habitat that could support CBB nesting and foraging.

Matt Fowler
California Department of Transportation
August 30, 2023
Page 5

CBB was once common in central and southern California. However, populations of CBB have severely declined, especially within California's Central Valley (Hatfield et al. 2014). Analyses by the Xerces Society et al. (2018) suggest there have been sharp declines in relative abundance by 98% and persistence by 80% over the last ten years.

Suitable CBB habitat includes areas of grasslands and upland scrub that contain requisite habitat elements, such as small mammal burrows. CBB primarily nest in late February through late October underground in abandoned small mammal burrows but may also nest under perennial bunch grasses or thatched annual grasses, under piles of brush, in old bird nests, and in dead trees or hollow logs (Williams et al. 2014; Hatfield et al. 2015). Overwintering sites utilized by CBB mated queens include soft, disturbed soil (Goulson 2010), or under leaf litter or other debris (Williams et al. 2014). Therefore, ground disturbance and vegetation removal associated with Project activities has the potential to significantly impact local CBB populations. As a state candidate species, take of CBB without appropriate incidental take authorization from CDFW would be a violation of Fish and Game Code.

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

CDFW recommends that a qualified biologist conduct focused surveys for CBB, and their requisite habitat features following the methodology outlined in the "Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species" (CDFW 2023b), in the appropriate survey season as part of the biological technical studies conducted in support of the Initial Study. CBB surveys are also recommended prior to Project activities. Potential nesting sites, which include all small mammal burrows, perennial bunch grasses, thatched annual grasses, brush piles, old bird nests, dead trees, and hollow logs would need to be documented as part of the assessment. If candidate bumble bees will be captured or handled, a 2081(a) Memorandum of Understanding with CDFW would be required. If CBB is observed in the Project site, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization prior to any ground-disturbing activities may be warranted. Take authorization would occur through issuance of an Incidental Take Permit by CDFW, pursuant to Fish and Game Code section, subdivision 2081(b).

COMMENT 4: Western Monarch

Issue: The Initial Study and NES do not provide an analysis of potential impacts to Western monarch. Project-related activities have the potential to impact breeding habitat of the monarch. Western monarch butterflies only lay their eggs on plants in the genus *Asclepias*, commonly known as milkweed. Milkweed breeding habitat is integral to the monarch reproductive cycle. Indian milkweed (*A. eriocarpa*), narrow leaf milkweed (*A. fascicularis*), and woolly milkweed (*A. vestita*) have been documented in the Project vicinity (Calflora 2023). Milkweed species tend to flower in the summer and may not have been observed during the early spring plant surveys completed for this Project.

Matt Fowler
California Department of Transportation
August 30, 2023
Page 6

Monarch populations in California have declined by over 99% in the past three decades (USFWS 2023). Loss and degradation of monarch breeding habitat is thought to be one of the leading factors in the decline of the western monarch population (Fallon et al. 2015, The Center for Biological Diversity et al. 2014). Milkweed is essential to monarch reproduction, and its abundance is correlated with monarch population numbers (Flockhart et al. 2015). Therefore, ground disturbance and vegetation removal associated with Project activities has the potential to significantly impact local monarch populations.

Recommended Avoidance, Minimization, and/or Mitigation Measures for

Monarch: CDFW recommends that a qualified biologist conduct a habitat assessment and survey for milkweed during the summer flowering season to determine if the Project site or its immediate vicinity contain habitat suitable to support monarch breeding, as part of the biological technical studies in support of the Initial Study. Milkweed surveys are also recommended prior to Project activities. If breeding habitat is present, CDFW recommends that a qualified biologist assess milkweed and other nearby plants (up to 30 feet away from milkweed stands) for the presence of monarch eggs, larvae, and chrysalises. If any milkweed or other plants are observed with monarch butterfly eggs, larvae, or chrysalises, within or adjacent to the Project site CDFW recommends implementation of avoidance measures to protect the full life cycle of the species.

CDFW encourages landscaping using native trees and shrubs to benefit native wildlife such as insect pollinators. Insect pollinators such as the monarch butterfly and native bees have declined drastically since the 1980s and have had an especially drastic decline since 2018 (Goulson et al. 2015, USFWS 2023). Habitat loss may be a primary driver of monarch decline in the west (Crone et al. 2019). CDFW recommends planting locally adapted, native flowering species over non-native ornamental species where possible. Non-native and ornamental milkweeds should never be included in landscaping.

COMMENT 6: Special Status Plants

Issue: Plant surveys were conducted in early spring 2021 during a drought year and did not represent the full flowering season as per CDFW guidelines (<https://wildlife.ca.gov/Conservation/Survey-Protocols>). Late flowering special status species would have been missed, particularly shining navarretia (*Navarretia nigelliformis* ssp. *radians*) (California Rare Plant Rank 1B.2). Several records of shining navarretia are found in the annual grassland directly adjacent to the Project site (CDFW 2023a). CDFW recommends that the Initial Study provide a more thorough discussion of this taxon.

Recommended Avoidance, Minimization, and/or Mitigation Measures for Special Status Plants: To ensure sufficient funding and planning, CDFW recommends that a qualified botanist conduct plant surveys at the appropriate seasons at the Project site

Matt Fowler
California Department of Transportation
August 30, 2023
Page 7

and within 50 feet of the Project site prior to Project activities. Because plant taxonomy and statuses may change, CDFW recommends omitting references to only certain species in the “Plant Species” measures Initial Study and NES.

Measure “Plant Species-3” in the Initial Study and “Bio-10” in the NES also provides a statement that CDFW would be contacted to salvage the species. This measure is an incorrect interpretation of the Native Plant Protection Act. Fish and Game Code section 1913(c) allows for certain property owners, including public agencies, to request that CDFW collect endangered or rare species in advance of changing a land use. This does not apply to other special status species. As such, CDFW recommends that these measures be revised to indicate that the City would salvage appropriate plant materials, coordinating with CDFW for case-specific guidance.

Measure “Natural Communities-2” in the Initial Study states: “...a Restoration and Monitoring Plan for these areas would be prepared and submitted to Caltrans and the California Department of Fish and Wildlife for approval and implemented within 1 year of Project completion. Success standards would be set. There would be a minimum 5-year monitoring term based upon success standards achievement.” Although CDFW encourages and supports restoring impacted areas with appropriate native species, CDFW only has approval authority over a restoration plan under the jurisdiction of the Lake and Streambed Alteration Agreement or an Incidental Take Permit.

COMMENT 5: Special Status Bats

Issue: The Initial Study and NES provide information on two possible special status bats that are known to occur in the Project vicinity; Townsend’s big eared bat and Western red bat. Other special status bat species have been observed in the Project vicinity (including within the 9-quad search radius for CNDDDB, the method described in the NES) and could potentially occur in the Project site, including pallid bat and western mastiff bat. The Project site may also have other bat species that are currently not listed as special status species. The NES states that “CDFW is most concerned about the loss of maternity roosting sites” and avoidance and minimization measures are focused on maternal roosts. Note that CDFW is also concerned about disturbance to roosting bats outside of the maternity season and loss of roosting habitat.

Pallid, Townsend’s big-eared, and Western red bats may roost in a variety of natural and manufactured habitats that are present in the Project site, including trees, cliffs, and manufactured structures such as buildings, bridges, and culverts. A variety of bats may also use trees as another source of roosting habitat, and some, as in the case of Western red bat, only use trees and shrubs for roosting. Bats are particularly more likely to utilize manufactured structures and trees even near busy highways and urban areas when natural habitat is limited, such as in the Project site. Without appropriate avoidance and minimization measures for bats, Project activities may result in potentially significant impacts to roosting or maternal bats, including potential

Matt Fowler
California Department of Transportation
August 30, 2023
Page 8

inadvertent entrapment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

The Initial Study incorrectly describes Townsend's big-eared bat as a state-candidate threatened species, although its status is correctly identified in the NES. This species is not state or federally listed but is a state Species of Special Concern (see the most updated Special Animals List in <https://wildlife.ca.gov/Conservation/SSC>).

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

CDFW advises that a qualified biologist conduct focused surveys for bats and potential roosting habitat within 400 feet of the Project site, as part of the biological technical studies in support of the Initial Study. Bat surveys are also recommended prior to Project activities, as identified in the Initial Study and NES. Avoidance whenever possible is encouraged via delineation and observance of no disturbance buffers according to activity and species, as recommended in Table 7-1 of "Caltrans Bat Mitigation: A Guide to Developing Feasible and Effective Solutions" (<https://dot.ca.gov/programs/environmental-analysis/biology/wildlife>), ranging from 100 feet to 400 feet. If roosting bats are observed in the Project site or buffer areas, CDFW recommends that Caltrans stop work within the buffer area and coordinate with CDFW for site-specific impact minimization recommendations. To mitigate for potential Project impacts on bats, CDFW encourages Caltrans to incorporate bat habitat into the Project design.

II. Editorial Comments and/or Suggestions

CDFW requests that the Initial Study 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 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 and/or the need for additional or protocol level surveys, and to identify any Project-related impacts under CESA and other species of concern. CDFW recommends the Initial Study 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>).

CNDDDB Mapping: Figure 6 in the NES depicts locations of special status species. CDFW recommends that you remove this map from any public documents such as the NES. Please refer to CNDDDB License Agreement and Data Use Guidelines (<https://wildlife.ca.gov/Data/CNDDDB>).

Matt Fowler
California Department of Transportation
August 30, 2023
Page 9

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, section 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 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/Plantsand-Animals>.

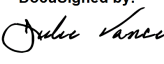
FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying Project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, section 753.5; Fish & G. Code, section 711.4; Pub. Resources Code, section 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the Initial Study to assist Caltrans and the City of Paso Robles in identifying and mitigating Project impacts on biological resources. If you have any questions, please contact CDFW at the address provided on this letterhead or at RRR.R4@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

Attachment 1: Recommended Mitigation Monitoring and Reporting Program (MMRP)

Matt Fowler
California Department of Transportation
August 30, 2023
Page 10

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Matt Fowler
California Department of Transportation
August 30, 2023
Page 11

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Matt Fowler
 California Department of Transportation
 August 30, 2023
 Page 12

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

PROJECT: State Route 46 East/Union Road Intersection Improvements Project

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

RECOMMENDED MITIGATION MEASURE	STATUS/ DATE/ INITIALS
<i>As Part of Biological Studies in Support of the Initial Study</i>	
Golden eagle (GOEA) nesting surveys	
Crotch's bumble bee (CBB) habitat surveys	
Monarch breeding habitat surveys	
Plant surveys	
Bat surveys	
<i>Before Disturbing Soil or Vegetation</i>	
SAN Joaquin kit fox (SJKF) surveys	
GOEA nest occupancy surveys	
CBB habitat assessment surveys	
Monarch breeding habitat surveys	
Incorporate native pollinator plants in the Project design	
Plant surveys	
Bat surveys	
Incorporate bat habitat into the Project design	
<i>During Construction</i>	
SJKF avoidance	
GOEA nest avoidance	
CBB avoidance	
Monarch avoidance	
Bat no-disturbance buffers	