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Governor's Office of Planning & Research

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464 West Fourth Street, MS 823
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STATE CLEARINGHOUSE

**Subject: Initial Study/Mitigated Negative Declaration, SBD-18 Lucerne Valley
Pavement Rehab (Project), State Clearinghouse No. 2024020413,
County of San Bernardino**

Dear Malisa Lieng:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (IS/MND) from the California Department of Transportation (Caltrans) for the Project pursuant 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 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 their habitats 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.

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.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: Caltrans District 8

Objective: The objective of the Project is to preserve and extend the service life of the existing pavement, as well as other existing roadway infrastructure and improve deficiencies along State Route (SR) 18 in San Bernardino County.

Description: The Project will rehabilitate the pavement and improve the ride quality of SR 18 from Camp Rock Road (Postmile (PM) 66.9) to Custer Ave (PM 75.6). Primary Project activities include:

- 0.35 feet of partial depth recycling and 0.15 feet overlay of Hot Mix Asphalt (HMA-A).
- Construction of eight-foot shoulders with tapered edges and shoulder backing with 0.35-foot HMA-A and 0.35-foot class two aggregate base.
- Replacement of sign panels.
- Replacement of the existing metal beam guardrail with a Midwest guardrail system.
- Installation of concrete vegetation control.
- Upgrade of transportation management solution elements.
- Extension of culverts within the Project limits.
- Installation of median and shoulder rumble strips.
- Concrete barrier transitions to connect the Midwest guardrail system to the existing bridge railing at the following bridges: Artic Canyon Wash (Bridge No. 54-0569) and Lucerne Valley Storm Drain (Bridge No. 54-1047).
- Installation of high visibility crosswalks at the SR 18 and Crystal Creek Road intersection.
- Construction of refuge pads at the SR 18 and Crystal Creek Road intersection.
- Refreshment of recessed pavement markers.

Location: The Project site is located along SR 18 in the town of Lucerne Valley, San Bernardino County, California 92356; from PM 66.9 to PM 75.6; approximate center coordinate of Latitude 34.420589 and Longitude -116.916217.

Timeframe: The Project is proposed to begin in 2026 and is estimated to take 205 working days to complete.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations below to assist Caltrans 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 Final MND.

I. Mitigation Measure or Alternative and Related Impact Shortcoming

COMMENT 1: Special-status and Sensitive Plants

Chapter 2.4(a), (b); Page 11, 17, 18, 19

Issue: The Project has the potential to result in permanent and temporary impacts to special-status plants such as, alkali mariposa lily (*Calochortus striatus*), CESA-listed plants such as, western Joshua tree (WJT) (*Yucca brevifolia*), Sensitive Natural Communities, and the habitats thereof. This includes potential impacts to approximately 2,616 WJT as reported in the IS/MND.

Specific impact: The Project, as described, will require vegetation removal in mass associated with grading and road construction in areas currently undeveloped where special-status plants, CESA-listed plants, and/or Sensitive Natural Communities are present. The Project as described holds the potential to take special-status plants, CESA-listed plants, and Sensitive Natural Communities (i.e., those with a State (S) Rarity Rank of S1 through S3.2) through mortality by modifying roots and root zones, hydrology, and latent effects associated with introduction or proliferation of invasive species and changing habitat composition.

Why impact would occur: The IS/MND indicates that special-status plants and the habitats thereof would be avoided as *feasible*, thus indicating the potential that special-status plants may be impacted. Impacts to special-status plants may be indirect or direct as a consequence of the Project. Direct impacts to special-status plants within the Project Impact Area (PIA) include grading, vegetation removal, paving, and ongoing road shoulder maintenance. Indirect impacts to plants include

modified hydrology, dust, increased risk of wildfire, and a reduction in pollinators associated with vehicle strike. The IS/MND includes on Page 12, “Potential indirect impacts are those that occur due to the proximity of a disturbance or development to a species or its habitat. Examples of indirect impacts include impacts to reproduction and exposure to additional dust that limits growth. These impacts occur over the short term, during construction, and over the long term, due to proximity of new Project features. The magnitude of an indirect impact can be as significant as that of direct impacts, depending on the circumstances. Direct impacts entail those that destroy or displace a species or its habitat. These impacts can occur in association with the Project construction due to vegetation removal, tree cutting, or hitting trees with construction vehicles.”

The IS/MND indicates that Sensitive Natural Communities would be potentially impacted. The IS/MND states on Page 19, “Potential impacts to natural communities of concern may occur in association with the Project due to disturbances associated with vegetation removal, ground disturbance, shoulder backing, and road widening. The PIA has some disturbed areas and areas with fewer disturbances. Indirect impacts such as water quality and litter control are addressed through avoidance and minimization measures. Indirect impacts may result to natural communities due to nonnative species introduction and increased dust, both of which could reduce the quality of habitat or affect the survival and reproductive fitness of the plant species comprising the community. Indirect impacts, such as water quality and litter control, are addressed through avoidance and minimization measures.”

Evidence impact would be significant: The Project as described may result in direct take of special-status plants, parts thereof, and would result in the loss of the habitats on which they depend on. CDFW’s Biogeographic Information and Observation System (BIOS) and California Natural Diversity Database (CNDDDB) records, and Appendix F of the IS/MND, include that special-status species are known to occur within the Project Area; for example, alkali mariposa lily, desert bird’s beak, and WJT. Mitigation measures included in the IS/MND (i.e., BIO-Plant-1) do not consider conducting floristic field surveys for special-status plants and instead proposes a pre-construction survey within three days of construction to flag or fence for avoidance special-status plants in the Project site and within 50 feet. With the large acreage and linear footprint of the Project, and with the Project’s area being subject to unpredictable weather patterns that may not align with the expected flowering period of special-status plants, the use of presence/absence surveys as proposed in the IS/MND would have the potential to not fully avoid special-status plants, and as such, would not mitigate the impacts to special-status plants to a level of less than significant. Moreover, special-status plants with the potential to occur within, and adjacent to, the PIA hold propagule vectoring habits that exceed 50 feet in dispersal, and as such, the proposed 50-foot buffer would be insufficient at mitigating the impacts to special-status plants to a level of less than significant. The IS/MND also defers mitigation for impacts to special-status plants that are

unavoidable to a later date, and no plans are provided on how temporary impacts to special-status plants and their habitats, and/or Sensitive Natural Communities, will be restored and/or monitored for success. The Caltrans Standard Best Management Practices (BMPs) and the 2023 Standard Specifications noted in the IS/MND do not include species specific compensatory mitigation outside of avoidance. CDFW considers the take of special-status plants and the loss of these species' habitats, and the loss of Sensitive Natural Communities, as a significant impact, unless mitigated to a level of less than significant.

Take of any CESA-listed plants, such as WJT, that results from the Project is prohibited, except as authorized by State law (Fish & G. Code, §§ 1927, 2080, 2085, California Code of Regulations, tit. 14, § 786.9). Plants constituting California Rare Plant Ranks 1A, 1B, 2A, and 2B (e.g., *Calochortus striatus*; 1B.2) generally meet the criteria of a CESA-listed species and should be considered as an endangered, rare or threatened species, or special-status sensitive species identified by CDFW for the purposes of CEQA analysis. Likewise, CDFW considers Sensitive Natural Communities with a Statewide rank of S1, S2, or S3, to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a Statewide ranking of S1, S2, and S3, should be considered sensitive and declining at the local and regional level. Whereas the IS/MND anticipates take of WJT, the estimated WJT to be impacted was based on a 2022 inventory taken for WJT. Please note that the inventory would not qualify as a protocol census under the Western Joshua Tree Conservation Act because requirements for the census differ from the surveys conducted for WJT for the IS/MND.

Recommended Potentially Feasible Mitigation Measure(s): CDFW recommends the inclusion of the below Mitigation Measures, as revised (edits are in ~~strikethrough~~ and additions are in ***bold italics***) and as proposed by CDFW in the Final MND to ensure impacts to special-status plants and the habitats thereof, and Sensitive Natural Communities, are mitigated to a level of less than significant.

BIO-Plant-1: Rare *Special-status* Plant Surveys and Sensitive Natural Communities, Flagging, and Fencing (Revised).

Within ***the appropriate identification periods for special-status plants and Sensitive Natural Communities, surveys shall be conducted according to the CDFW 2018 Protocols for Surveying and Evaluating Impacts to Special-status Plant Populations and Sensitive Natural Communities (found at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959>)***. In addition, three days prior to construction, ~~a~~ preconstruction surveys must be conducted by a ***CDFW approved*** Qualified Biologist ***with a minimum of five years of professional experience surveying*** for special-status plant species ***and Sensitive Natural Communities in Californian desert environments. Surveys shall be conducted within the PIA and 150 feet of the PIA. Special-status species and Sensitive***

Natural Communities must be flagged for visual identification to construction personnel for work avoidance. Special-status plant species detected that feature multiple plants in a single location must be fenced **off** with Environmentally Sensitive Area (ESA) high visibility fencing. ***Sensitive Natural Communities detected shall be flagged or fenced off with ESA high visibility fencing. If protocol level surveys are not able to be conducted due to Project contracting constraints, cyclical weather constraints (i.e., drought, flooding, etc.), or other reasons conflicting with the Project's build timeline special-status plants shall be assumed present in the Project area and mitigated by acreage in accordance with BIO-Plant-2.***

BIO-Plant-2: Compensatory Mitigation to Special-status and Sensitive Natural Communities Plants (New).

Permanent impacts (i.e., areas slated for road infrastructure development such as pavement, shoulders, or shoulder backing, or areas that will not return to their baseline ecological state and form within one-calendar-year of occurring impacts) (hereafter as, 'permanent impacts') to special-status plants, shall be mitigated at a minimum 3:1 (mitigated to impacted) ratio by acreage area. Temporary impacts (i.e., areas that will return to their baseline ecological state and form within one-calendar-year of occurring impacts) (hereafter as, 'temporary impacts') to special-status plants and their habitats, and Sensitive Natural Communities, shall be restored onsite at a 1:1 (mitigated to impacted) ratio by acreage area. Compensatory mitigation for special-status plant species and Sensitive Natural Communities impacts by total area (i.e., the combined total acreage of permanent and temporary impacts calculated post-ratios) shall be conducted either on-site through restoration activities, or through purchase of mitigation credits from a CDFW-approved bank and/or land acquisition, or a combination of both, in coordination with CDFW.

BIO-Plant-3: Compliance with the Western Joshua Tree Conservation Act (New).

Prior to the commencement of Project activities that may impact any western Joshua trees or parts thereof, CDFW recommends Caltrans apply for incidental take coverage for western Joshua tree through the Western Joshua Tree Conservation Act (found at: <https://wildlife.ca.gov/Conservation/Environmental-Review/WJT/Permitting> or by obtaining an Incidental Take Permit (ITP) under CESA.

COMMENT 2: Desert Tortoise (*Gopherus agassizii*)

Section 2.4(a); Page 12, 13

Issue: The Project has the potential to result in permanent and temporary loss, degradation, and impacts to desert tortoise habitat. Direct take of desert tortoise may occur during the course of Project activities and for the life of the Project, such as, equipment crushing during road maintenance and civilian vehicle strike after the Project's construction is complete.

Specific impact: The Project includes the potential for collapsing of desert tortoise burrows, entombment, direct take associated with vehicle and equipment strike, indirect take associated with Project operations, reduction of habitat associated with road infrastructure expansion, and reduction of species movement.

Why impact would occur: The IS/MND indicates that desert tortoise could be directly impacted during construction and for the life of the Project. The IS/MND also indicates that permanent and temporary impacts associated with the Project's construction would occur to desert tortoise habitat. The IS/MND notes on Page 13, "There is suitable habitat in the form of Mojavean desert scrub throughout the Biological Study Area (BSA) and PIA. This species [desert tortoise] is not anticipated to be burrowing in the PIA due to disturbance. However, individuals may still be found in the PIA as they search for food and water."

Evidence impact would be significant: Whereas the IS/MND indicates that CNDDDB did not hold records of desert tortoise within the Project Area, and that presence of desert tortoise is not anticipated due to this reason, CDFW found that desert tortoise was observed and documented twice on CNDDDB's unprocessed data layer within one-mile from the Project Area (Littlefield & others, 2014). Seven other unprocessed records for the species are found eastward from the Project site within three miles (Alberts & others, 2009). All of these records occur within a continuous band of unimpeded habitat for which desert tortoise could be moving, through and into the Project site in search for mates, food, water, or habitat. In addition, the Project, as described, would remove potential habitat for desert tortoise. CDFW considers the take of desert tortoise and the loss of the species' habitat as a significant impact, unless mitigated to a level of less than significant.

Recommended Potentially Feasible Mitigation Measure(s): CDFW recommends the adoption of the below Mitigation Measures (additions are in ***bold italics***) in the Final MND to ensure impacts to desert tortoise, and the habitats thereof, are mitigated to a level of less than significant.

BIO-Reptile-2: (NEW).

Desert tortoise pre-construction surveys shall be conducted in accordance with the U.S. Fish and Wildlife Service's 2019 desert tortoise survey methodology (see:

<https://www.fws.gov/sites/default/files/documents/Mojave%20Desert%20Tortoi>

[se Pre-project%20Survey%20Protocol 2019.pdf](#)). The survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. Results of the survey shall be submitted to CDFW prior to the start of Project activities. If the survey confirms desert tortoise absence, the CDFW-approved biologist shall ensure desert tortoise does not enter the Project area. A CDFW-approved biologist shall be present to monitor construction at all times when and where desert tortoise has the potential to enter an active construction area of the Project. If the survey confirms presence of desert tortoise, or if a desert tortoise is observed at any time, Caltrans shall submit to CDFW for review and approval a desert tortoise specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take to desert tortoise. If complete avoidance of desert tortoise cannot be achieved, CDFW recommends that Project activities be postponed until appropriate authorization (i.e., a finalized CESA ITP under Fish and Game Code section 2081) is obtained.

BIO-Reptile-3: (NEW).

Permanent impacts to desert tortoise habitats shall be mitigated at a minimum 3:1 (mitigated to impacted) ratio by acreage area. Temporary impacts to desert tortoise habitats shall be restored onsite at a 1:1 (mitigated to impacted) ratio by acreage area. If areas temporarily impacted will not return to their baseline ecological state and form within one-calendar-year of occurring impacts, additional compensatory mitigation to address temporal losses of habitat shall occur. Compensatory mitigation for desert tortoise habitat impacts by total area (i.e., the combined total acreage of permanent and temporary impacts calculated post-ratios) shall be conducted either on-site through restoration activities, or through purchase of mitigation credits from a CDFW-approved bank and/or land acquisition, conservation, and management, or a combination of both, in coordination with CDFW.

COMMENT 3: Crotch's Bumble Bee (*Bombus crotchii*)

Section 2.4(a); Page 14

Issue: The Project has the potential to result in permanent and temporary loss, degradation, and impacts to Crotch's bumble bee habitat. Direct take of Crotch's bumble bee, a CESA-listed candidate endangered species, during the course of Project activities and for the life of the Project may occur.

Specific impact: The Project includes the potential for the collapsing of burrows, entombment, displacement, direct take associated with vehicle and equipment strike, indirect take associated with Project operations such as dust, reduction of

foraging and nesting habitat and habitat quality associated with road infrastructure expansion and vegetation removal.

Why impact would occur: Crotch's bumble bee could be directly impacted during construction and for the life of the Project through the removal of host plants, vehicle strike, and loss of habitat features when road construction occurs. The IS/MND also indicates habitat conversion may occur indirectly through the introduction of invasive species. This can be found on Page 14 of the IS/MND, which states, "The Project has the potential to directly impact Crotch bumble bee by the removal of host plants for construction. Temporary impacts include vegetation removal, ground disturbance, and staging areas. Indirect, permanent impacts include habitat conversion through the introduction of invasive species..."

Evidence impact would be significant: The IS/MND indicates that Crotch's bumble bee CNDDDB records from the 1940s intersect the Project area, and that Crotch's bumble bee habitat persists at the Project area according to the 2023 floristic surveys included in Appendix F. CDFW would like to note that the absence of species occurrence evidence is not the evidence of absence, and that local entomologists have documented the species within a reasonable dispersal distance of the Project area. Unprocessed CNDDDB records for the species are found northwest of the Project site within like floristic conditions near Antelope Valley (Bulbenko, 2023), and habitat connectivity exists between these observation records and the Project area. Thus, CDFW encourages Caltrans to widen their scope of considerations for the distribution of Crotch's bumble bee. The Project, as described, would remove potential habitat, including nesting habitat for Crotch's bumble bee. CDFW considers the direct and indirect take of Crotch's bumble bee, and the loss of the species' habitat as a significant impact, unless mitigated to a level of less than significant.

Recommended Potentially Feasible Mitigation Measure(s): CDFW supports the inclusion of the below Mitigation Measures, as revised (edits are in ~~strikethrough~~ and additions are in ***bold italics***) in the Final MND to ensure impacts to Crotch's bumble bee, and the habitats thereof, are mitigated to a level of less than significant.

BIO-Arthropod-1: Rare Insect Host Plant Preconstruction Clearance Survey, Flagging, and Fencing (Revised).

No more than 3 days prior to Project activities, a Qualified Biologist ***shall*** ~~must~~ perform a preconstruction survey for rare insect host plants ***for Crotch's bumble bee, potential nesting locations, nests, and individuals***, within the PIA and 50' outside the PIA ***following the CDFW Protocol Found at:***

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=213150&inline#:~:text=The%20surveyor%20should%20walk%20through,are%20unsure%20of%20proper%20identification.&text=bumble%20bee%20surveys.,-lf%20state%2Dlisted.>

Should any rare insect host plants for Crotch's bumble bee be found, or if potential Crotch's bumble bee nests or individuals are found, the Resident Engineer and Caltrans Biologist **shall** ~~must~~ be contacted, and host plants **shall** ~~must~~ be flagged by the Qualified biologist for visual identification to construction personnel for work avoidance. **If surveys are being conducted outside of an appropriate identification period (e.g., Bombus spp. dormancy period, drought year, etc.) for host plants and/or bumble bee species, their presence shall be assumed and the location avoided.** Should multiple **host** plants in a single location be found, the groupings **shall** ~~must~~ be fenced with ~~Environmentally Sensitive Area (ESA)~~ temporary high visibility fencing. **Regarding potential nesting resources, if Caltrans expects take of Crotch's bumble bee through either nest destruction, destruction of potential nests hidden in bunch grasses, or other nesting habitat, or if complete avoidance of Crotch's bumble bee cannot be achieved, CDFW recommends that Project activities be postponed until appropriate authorization (i.e., a finalized CESA ITP under Fish and Game Code section 2081) is obtained.**

BIO-Arthropod-PSM-2: Plant Seed Mix (Revised).

Seed mixes **used for restoration of Project areas where Crotch's bumble bee habitat is impacted shall** ~~must~~ contain a diverse array of **local**, native pollinator plant species **appropriate for Crotch's bumble including, but not limited to: Asclepias spp., Chaenactis spp., Clarkia spp., Eriogonum spp., Eschscholzia spp., Lupinus spp., Phacelia spp., Salvia spp., and local native bunch grasses. Seed and seed mixes applied shall be irrigated as necessary to ensure germination and establishment. Caltrans shall maintain (as needed) and monitor locations where seed mixes are applied for a minimum of one-year to ensure successful germination and establishment. Additional months or years of maintenance and monitoring shall occur if germination and establishment fail to remediate Project impacted areas within one-year of seed mix application.**

COMMENT 4: Burrowing Owl (*Athene cunicularia*)

Section 2.4(a); Page 14, 15

Issue: The Project has the potential to result in permanent and temporary loss, degradation, and impacts to burrowing owl habitat. Direct take of burrowing owl may also occur during the course of Project activities and for the life of the Project.

Specific impact: The Project includes the potential for the collapsing of burrows, entombment, displacement, direct take associated with vehicle and equipment strike, indirect take associated with Project operations such as attracting predators, reduction of habitat and habitat quality associated with road infrastructure

expansion. The Project as described will cause permanent and temporary impacts to burrowing owl foraging and nesting habitat.

Why impact would occur: Burrowing owl could be directly impacted during construction and for the life of the Project through the removal of potential foraging habitat, and loss of habitat features caused by road widening and the installation of shoulder backing. Nest destruction, nest abandonment, disturbance from construction noise and activities, increased risk of predation and degradation of suitable habitat could also all lead to significant impacts to burrowing owl individuals and local populations. Habitat conversion may occur indirectly through the introduction of invasive species, which could also negatively affect burrowing owls. The IS/MND acknowledges the potential for burrowing owl impacts notable on Page 14 when it states, “There is suitable habitat within the BSA, however, and could be affected by auditory or visual disturbance. They may occur in the BSA and may be indirectly affected by Project activities.” Lastly, whereas the 2023 BSA survey included burrowing owl potential, a focused survey for the species following a CDFW approved protocol, or similar approach, was not conducted. Burrowing owls are known to occur within a reasonable dispersal distance of the Project area (Arnold, & others, 2006) and potential nesting and foraging habitat occurs within and adjacent to the Project area.

Evidence impact would be significant: Burrowing owls are a CDFW Species of Special Concern (SSC), and the Project, as described, may result in injury, direct mortality, indirect mortality, disruption of breeding behavior, and/or may reduce reproductive capacity of the species. The Project’s mitigation measures do not specify methods by which burrowing owls will be identified, or how impacts to owls and associated habitat will be avoided, minimized, and/or mitigated; thus the measures do not adequately mitigate the potential permanent and temporary impacts to burrowing owl to a level of less than significant. CDFW considers the direct and indirect take of burrowing owl, and the loss of the species’ habitat as a significant impact, unless mitigated to a level of less than significant.

Recommended Potentially Feasible Mitigation Measure(s): CDFW recommends the inclusion of the below Mitigation Measure, as revised (edits are in ~~strikethrough~~ and additions are in ***bold italics***) in the Final MND to ensure impacts to burrowing owl, and the habitats thereof, are mitigated to a level of less than significant.

BIO-Avian-2 (Revised):

The following ~~Two~~ burrowing owl preconstruction surveys must be performed: one survey 14 to 30 days prior to project activities, one survey 24 hours prior to project activities; ***and burrowing owl preconstruction surveys shall be conducted in accordance with the 2012 Staff Report on Burrowing Owl Mitigation (Staff Report) (See:***

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>) prior to vegetation removal or ground disturbing activities. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The Qualified Biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities and implementing the measures of the Burrowing Owl Plan.

The Burrowing Owl Plan shall describe proposed avoidance, monitoring, relocation, minimization, and/or mitigation actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat or burrows cannot be avoided, the Burrowing Owl Plan shall also describe minimization and compensatory mitigation actions that will be implemented. Proposed implementation of burrow exclusion (i.e., passive relocation) and closure shall 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 and has the possibility to result in take. 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 Caltrans shall implement CDFW approved mitigation prior to the initiation of Project activities. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to burrowing 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 burrowing owls shall also be included in the Burrowing Owl Plan.

COMMENT 5: Nesting Birds

Section 2.4(a); Page 14, 15,

Issue: The Project as described will cause impacts to avian species, including CDFW SSC such as Le Conte's thrasher, and common birds that are subject to Fish and Game Code sections 3503 and 3513, and the Migratory Bird Treaty Act of 1918.

Specific impact: The Project as described could result in direct take associated with vehicle and equipment strike, indirect take associated with Project operations such as attracting predators, displacement, reduction of habitat and habitat quality associated with road infrastructure expansion. The Project as described would cause permanent and temporary impacts to avian species' foraging and nesting habitat.

Why impact would occur: Nesting avian species could be directly impacted during construction and for the life of the Project through the removal of potential foraging habitat, and loss of habitat features caused by road widening and the installation of shoulder backing. Nest destruction, nest abandonment, disturbance from construction noise and activities, increased risk of predation and degradation of suitable habitat could also lead to significant impacts to nesting avian species and local populations. The IS/MND also indicates habitat conversion may occur indirectly through the introduction of invasive species, which could also negatively affect avian species' abilities to successfully nest and reproduce. This is primarily noted on Page 14 of the IS/MND as, "There is suitable habitat within the BSA, however, and could be affected by auditory or visual disturbance. They may occur in the BSA and may be indirectly affected by Project activities."

Evidence impact would be significant: 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 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.). 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.

The IS/MND anticipates there to be no nesting avian species within the PIA due to ambient baseline disturbance, yet the Project as described holds the potential to affect nesting avian species within and beyond the PIA through construction impacts, vegetation removal, and road infrastructure development. CDFW considers the take of avian species nests and eggs as a result of Project activities a potentially significant impact, unless mitigated to a level of less than significant.

Recommended Potentially Feasible Mitigation Measure(s): CDFW recommends the inclusion of the below Mitigation Measure, as revised (edits are in ~~strike through~~ and additions are in ***bold italics***) in the Final MND to ensure impacts to common and special-status nesting birds, and the habitats thereof, are mitigated to a level of less than significant.

BIO-Avian-1: Preconstruction Nesting Bird Survey (Revised).

Project activities shall not result in impacts to nesting birds, or result in the take or removal of nests or eggs in accordance with CDFW and USFWS regulations. p Preconstruction nesting bird surveys ***shall*** ~~must~~ be conducted ***no***

more than 3 days prior to construction by a Qualified Biologist experienced with: identifying local and migratory bird species; conducting bird surveys using appropriate survey methodology; nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures, in order to locate and avoid nesting birds within and/or adjacent to the PIA. Concurrent and further surveys shall occur as Project construction progresses, as the nature of the Project is linear in fashion. If any active nest is located, a no disturbance construction buffer shall may be established and monitored by the Qualified Biologist based on the professional judgement of the Qualified Biologist, and on any nesting bird behavioral response associated with Project related activities including any synergistic responses of ambient baseline disturbances compounding with Project related activities. Any active nests shall be continuously monitored by a Qualified Biologist or biological monitor during the course of Project activities that have the potential to cause disturbance to any nesting birds to ensure avoidance buffers are effective. Avoidance buffers shall be expanded and/or modified as needed by the Qualified Biologist if any nesting bird shows behavioral responses resulting from Project related activities.

II. Lake and Streambed Alteration Program

COMMENT 6: Lake and Streambed Alteration

Section 2.4(c); Page 20, 21

Issue: The IS/MND does not fully consider all areas subject to Fish and Game Code section 1602 and requires consideration of Fish and Game Code section 5650.

Specific impact: The Project as described would include: substantial diversion or obstruction of natural flow of a stream; substantial change in the bed, bank, and channel of a stream; or deposition of debris or other materials containing ground pavement where they may pass into a stream.

Why impact would occur: Based on the review of the materials submitted with the IS/MND, and review of aerial photography, the Project as described will have impacts to Fish and Game Code section 1602 resources within the Project Area.

Evidence impact would be significant: 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 subsurface flow, and the hyporheic zones thereof. The Project, as described in the IS/MND will be subject to Notification under 1602. CDFW considers substantial adverse impacts and the deposition of materials where they may pass into streams as a significant impact, unless mitigated to a level of less than significant.

Recommended Potentially Feasible Mitigation Measure(s): CDFW recommends the inclusion of the below Mitigation Measure (additions are in ***bold italics***) in the Final MND to ensure impacts to Fish and Game Code section 1602 resources are mitigated to a level of less than significant.

BIO-General-18: Notification to CDFW (NEW).

Caltrans shall notify CDFW under Fish and Game Code section 1600 et seq. for all portions of the Project that will substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake. Shoulder backing that is planned to be placed in or near channel areas that are subject to Fish and Game Code section 1600 notification shall not consist of asphalt, bitumen, or any other substance or material that is deleterious to fish, plant life, mammals, or birdlife in accordance with Fish and Game Code 5650 et seq.

To minimize significant impacts:

To ensure that any LSA notification will meet the threshold of completeness review and not generate an incomplete letter, CDFW recommends Caltrans conduct a new analysis of the Project area for where 1602 resources could be affected by the Project, including the placement of materials where they have the potential to pass into channel areas. This includes where paving and shoulder backing activities could have the potential to pass into Fish and Game Code section 1602 regulated areas during worst case scenarios, which has been seen elsewhere in Caltrans District 8 such as during the 2023 storm year on SR 127 (see: <https://dot.ca.gov/caltrans-near-me/district-8/district-8-current-projects/sr--127-emergency-project-baker-to-tecopa>). CDFW is available for coordination and review of areas where Fish and Game Code section 1602 resources occur within the Project area. This may include site visits and analysis prior to the submittal of any LSA notification.

III. Editorial Comments and/or Suggestions

CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species, whereas enforcement of this jurisdiction occurs within the entirety of the State of California, and 200 miles off of California's coastline. Within Fish and Game Code section 1600 et seq., CDFW regulates activities that affect streams, as stated, "An entity may not substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake, unless... [followed by the LSA notification process]." CDFW's jurisdiction, and Fish and Game Code section 1602 language is either quoted incorrectly, or quoted in partial, within the IS/MND.

CDFW recommends that the Final MND consider analysis for areas where materials will be deposited that have the potential to pass into a river, stream, or lake. CDFW recommends that all temporary and permanent impacts to fish and wildlife resources be reevaluated and included in the Final MND, including those regulated under Fish and Game Code section 1602, for which it is expected that the impact areas mapped in Appendix F will increase.

Lastly, The JD BSA incorrectly states that "Stream" is defined by CDFW regarding Streambed Alteration under California Code of Regulations (CCR) Title 14 Section 1.72. Please note that CCR Title 14 section 1 et seq. addresses sport fishing regulations adopted by the Fish and Game Commission, and as such shall not be misconstrued to apply to CDFW's Lake and Streambed Alteration Program.

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 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 IS/MND to assist Caltrans District 8 in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to CDFW Senior Environmental Scientist, Andrew Chambers, at (909) 354-0919, or by email at Andrew.Chambers@wildlife.ca.gov.

Sincerely,

DocuSigned by:

84F92FFEEFD24C8...

Kim Freeburn
Environmental Program Manager

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

REFERENCES

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Attachment A: Draft Mitigation and Monitoring Reporting Plan

CDFW recommends the following language to be incorporated into the Final MND for the Project.

Biological Resources (BIO)			
Mitigation Measure (MM)		Timing	Responsible Party
BIO-Plant-1	<p>Within the appropriate identification periods for special-status plants and Sensitive Natural Communities, surveys shall be conducted according to the CDFW 2018 Protocols for Surveying and Evaluating Impacts to Special-status Plant Populations and Sensitive Natural Communities (found at: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959). In addition, three days prior to construction, preconstruction surveys must be conducted by a CDFW approved Qualified Biologist with a minimum of five years of professional experience surveying for special-status plant species and Sensitive Natural Communities in Californian desert environments. Surveys shall be conducted within the PIA and 150 feet of the PIA. Special-status species and Sensitive Natural Communities must be flagged for visual identification to construction personnel for work avoidance. Special-status plant species detected that feature multiple plants in a single location must be</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project proponent</p>

	fenced off with Environmentally Sensitive Area (ESA) high visibility fencing. Sensitive Natural Communities detected shall be flagged or fenced off with ESA high visibility fencing. If protocol level surveys are not able to be conducted due to Project contracting constraints, cyclical weather constraints (i.e., drought, flooding, etc.), or other reasons conflicting with the Project's build timeline special-status plants shall be assumed present in the Project area and mitigated by acreage in accordance with BIO-Plant-2.		
BIO-Plant-2	Permanent impacts (i.e., areas slated for road infrastructure development such as pavement, shoulders, or shoulder backing, or areas that will not return to their baseline ecological state and form within one-calendar-year of occurring impacts) (hereafter as, 'permanent impacts') to special-status plants, shall be mitigated at a minimum 3:1 (mitigated to impacted) ratio by acreage area. Temporary impacts (i.e., areas that will return to their baseline ecological state and form within one-calendar-year of occurring impacts) (hereafter as, 'temporary impacts') to special-status plants and their habitats, and Sensitive Natural Communities, shall be restored onsite at a 1:1 (mitigated to impacted) ratio by acreage area. Compensatory mitigation for special-status plant species and Sensitive Natural Communities impacts by total area (i.e., the combined total acreage of permanent and temporary impacts calculated post-ratios) shall be conducted either on-site through restoration activities, or through purchase of mitigation credits from a CDFW-approved bank and/or land acquisition, or a combination of both, in coordination with CDFW.	Prior to commencing ground or vegetation disturbing activities	Project Proponent
BIO-Plant-3	Prior to the commencement of Project activities that may impact any western Joshua trees or parts thereof, CDFW recommends Caltrans apply for incidental take coverage for western Joshua tree through the Western Joshua Tree Conservation Act (found at:	Prior to commencing ground or vegetation	Project Proponent

	https://wildlife.ca.gov/Conservation/Environmental-Review/WJT/Permitting or by obtaining an Incidental Take Permit (ITP) under CESA.	on disturbing activities	
BIO-Reptile -2	<p>Desert tortoise pre-construction surveys shall be conducted in accordance with the U.S. Fish and Wildlife Service’s 2019 desert tortoise survey methodology (see: https://www.fws.gov/sites/default/files/documents/Mojave%20Desert%20Tortoise_Pre-project%20Survey%20Protocol_2019.pdf). The survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. Results of the survey shall be submitted to CDFW prior to the start of Project activities. If the survey confirms desert tortoise absence, the CDFW-approved biologist shall ensure desert tortoise does not enter the Project area. A CDFW-approved biologist shall be present to monitor construction at all times when and where desert tortoise has the potential to enter an active construction area of the Project. If the survey confirms presence of desert tortoise, or if a desert tortoise is observed at any time, Caltrans shall submit to CDFW for review and approval a desert tortoise specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take to desert tortoise. If complete avoidance of desert tortoise cannot be achieved, CDFW recommends that Project activities be postponed until appropriate authorization (i.e., a finalized CESA ITP under Fish and Game Code section 2081) is obtained.</p>	Prior to commencing ground or vegetation disturbing activities	Project proponent
BIO-Reptile -3	<p>Permanent impacts to desert tortoise habitats shall be mitigated at a minimum 3:1 (mitigated to impacted) ratio by acreage area. Temporary impacts to desert tortoise habitats shall be restored onsite at a 1:1 (mitigated to impacted) ratio by acreage area. If areas</p>	Prior to commencing ground or	Project Propo nent

	<p>temporarily impacted will not return to their baseline ecological state and form within one-calendar-year of occurring impacts, additional compensatory mitigation to address temporal losses of habitat shall occur. Compensatory mitigation for desert tortoise habitat impacts by total area (i.e., the combined total acreage of permanent and temporary impacts calculated post-ratios) shall be conducted either on-site through restoration activities, or through purchase of mitigation credits from a CDFW-approved bank and/or land acquisition, conservation, and management, or a combination of both, in coordination with CDFW.</p>	<p>vegetation disturbing activities</p>	
<p>BIO-Arthropod-1</p>	<p>No more than 3 days prior to Project activities, a Qualified Biologist shall perform a preconstruction survey for rare insect host plants for Crotch's bumble bee, potential nesting locations, nests, and individuals, within the PIA and 50 outside the PIA following the CDFW Protocol Found at: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=213150&inline#:~:text=The%20surveyor%20should%20walk%20through,are%20unsure%20of%20proper%20identification.&text=bumble%20bee%20surveys.,-If%20state%2Dlisted. Should any rare insect host plants for Crotch's bumble bee be found, or if potential Crotch's bumble bee nests or individuals are found, the Resident Engineer and Caltrans Biologist shall be contacted, and host plants shall be flagged by the Qualified biologist for visual identification to construction personnel for work avoidance. If surveys are being conducted outside of an appropriate identification period (e.g., <i>Bombus spp.</i> dormancy period, drought year, etc.) for host plants and/or bumble bee species, their presence shall be assumed and the location avoided. Should multiple host plants in a single location be found, the groupings shall be fenced with ESA temporary high visibility fencing. Regarding potential nesting resources, if Caltrans expects take of Crotch's bumble bee through either nest destruction, destruction of potential nests hidden in bunch grasses, or other nesting habitat, or if</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

	complete avoidance of Crotch’s bumble bee cannot be achieved, CDFW recommends that Project activities be postponed until appropriate authorization (i.e., a finalized CESA ITP under Fish and Game Code section 2081) is obtained.		
BIO-Arthropod-PSM-2	Seed mixes used for restoration of Project areas where Crotch’s bumble bee habitat is impacted shall contain a diverse array of local, native pollinator plant species appropriate for Crotch’s bumble including, but not limited to: <i>Asclepias spp.</i> , <i>Chaenactis spp.</i> , <i>Clarkia spp.</i> , <i>Eriogonum spp.</i> , <i>Eschschlozia spp.</i> , <i>Lupinus spp.</i> , <i>Phacelia spp.</i> , <i>Salvia spp.</i> , and local native bunch grasses. Seed and seed mixes applied shall be irrigated as necessary to ensure germination and establishment. Caltrans shall maintain (as needed) and monitor locations where seed mixes are applied for a minimum of one-year to ensure successful germination and establishment. Additional months or years of maintenance and monitoring shall occur if germination and establishment fail to remediate Project impacted areas within one-year of seed mix application.	Prior to commencing ground or vegetation disturbing activities	Project Proponent
BIO-Avian-1	Project activities shall not result in impacts to nesting birds, or result in the take or removal of nests or eggs in accordance with CDFW and USFWS regulations. Preconstruction nesting bird surveys shall be conducted no more than 3 days prior to construction by a Qualified Biologist experienced with: identifying local and migratory bird species; conducting bird surveys using appropriate survey methodology; nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures, in order to locate and avoid nesting birds within and/or adjacent to the PIA. Concurrent and further surveys shall	Prior to commencing ground or vegetation disturbing activities	Project Proponent

	<p>occur as Project construction progresses, as the nature of the Project is linear in fashion. If any active nest is located, a no disturbance buffer shall be established by the Qualified Biologist based on the professional judgement of the Qualified Biologist, and on any nesting bird behavioral response associated with Project related activities including any synergistic responses of ambient baseline disturbances compounding with Project related activities. Any active nests shall be continuously monitored by a Qualified Biologist or biological monitor during the course of Project activities that have the potential to cause disturbance to any nesting birds to ensure avoidance buffers are effective. Avoidance buffers shall be expanded and/or modified as needed by the Qualified Biologist if any nesting bird shows behavioral responses resulting from Project related activities.</p>		
<p>BIO- Avian- 2</p>	<p>The following burrowing owl preconstruction surveys must be performed: one survey 14 to 30 days prior to project activities, one survey 24 hours prior to project activities; and burrowing owl preconstruction surveys shall be conducted in accordance with the 2012 Staff Report on Burrowing Owl Mitigation (Staff Report) (See: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline) prior to vegetation removal or ground disturbing activities. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The Qualified Biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities and implementing the measures of the Burrowing Owl Plan.</p> <p>The Burrowing Owl Plan shall describe proposed avoidance, monitoring, relocation, minimization, and/or mitigation actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project PropONENT</p>

	<p>be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat or burrows cannot be avoided, the Burrowing Owl Plan shall also describe minimization and compensatory mitigation actions that will be implemented. Proposed implementation of burrow exclusion (i.e., passive relocation) and closure shall 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 and has the possibility to result in take. 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 Caltrans shall implement CDFW approved mitigation prior to the initiation of Project activities. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to burrowing 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 burrowing owls shall also be included in the Burrowing Owl Plan.</p>		
<p>BIO- Genera I-18</p>	<p>Caltrans shall notify CDFW under Fish and Game Code section 1600 et seq. for all portions of the Project that will substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake. Shoulder backing that is planned to be placed in or near channel areas that are subject to Fish and Game Code section 1600 notification shall not consist of asphalt, bitumen, or any other substance or material that is deleterious to</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

	fish, plant life, mammals, or birdlife in accordance with Fish and Game Code 5650 et seq.		
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