



DEPARTMENT OF FISH AND WILDLIFE
Central Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



June 20, 2024

Matt Fowler
California Department of Transportation
50 Higuera Street
San Luis Obispo, California 93401

Subject: Bradley-San Ardo CAPM (EA 05-1K490) (Project)
Initial Study with Proposed Mitigated Negative Declaration
State Clearinghouse No. 2024050493

Dear Matt Fowler:

The California Department of Fish and Wildlife (CDFW) received an Initial Study with Proposed Mitigated Negative Declaration (MND) from the California Department of Transportation (Caltrans) for the above referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

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 proposed,

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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.), related authorization as provided by the Fish and Game Code may 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. Fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

- Take is for necessary scientific research,
- Efforts to recover a fully protected, endangered, or threatened species, live capture, and relocation of a bird species for the protection of livestock, or
- They are a covered species whose conservation and management are provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Additionally, specified types of infrastructure projects may be eligible for an Incidental Take Permit (ITP) for unavoidable impacts to fully protected species if certain conditions are met (see Fish & G. Code §2081.15). Project proponents should consult with CDFW early in the project planning process if an ITP may be pursued for the Project.

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).

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.

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PROJECT DESCRIPTION SUMMARY

Proponent: Caltrans

Objective: The Project will rehabilitate pavement and 16 drainage culverts by diamond grinding, concrete panel replacement, cold planing, asphalt overlay, dig outs, cut and cover, and pipe jacking. The Project will also replace non-standard metal beam guardrail and end treatments, replace sign panels that do not use the Type XI reflective backing, install 14 traffic count stations, install one vehicular detection system, place vegetation-control crushed shale, and construct shoulder backing.

Location: The proposed project is located on State Route 101, from just south of the Jolon Road intersection near Bradley to the intersection with Paris Valley Road/Cattlemen Road near San Ardo, between postmiles (PM) R9.2 and R22.0, in Monterey County, California.

Timeframe: Project construction is estimated to begin in fall 2027 and to be completed by fall 2028.

I. 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. Editorial comments or other suggestions may also be included to improve the document.

Based on the Project location and proposed Project activities in the Initial Study, CDFW is concerned regarding potential impacts to special-status species, including but not limited to, the State threatened and federally endangered San Joaquin Kit Fox (*Vulpes macrotis mutica*), the fully-protected golden eagle (*Aquila chrysaetos*), the State threatened tricolored blackbird (*Agelaius tricolor*), and the federally proposed threatened western spadefoot (*Spea hammondi*).

San Joaquin Kit Fox (SJKF): The Project is within the known geographic range of SJKF and the MND has determined that there is potentially suitable habitat within the Project area. SJKF may be attracted to any construction area due to the type and level of activity (pipes, excavation, etc.) and the loose, friable soils that are created as a result of intensive ground disturbance. The MND indicated that the Project would obtain a Biological Opinion from the U.S. Fish and Wildlife Service for potential Incidental Take

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of SJKF during construction. Some of the avoidance and minimization measures in the MND would constitute take as defined by Fish and Game Code section 86. Based on this information, CDFW recommends that the Project proponent acquire a State ITP for SJKF prior to any ground-disturbing activities, pursuant to Fish and Game Code section 2081, subdivision (b).

CDFW recommends assessing 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", and implementing no-disturbance buffers around den sites, as described in the United States Fish and Wildlife Service document (USFWS 2011). Specifically, CDFW recommends conducting these surveys over the entirety of the Project site no less than 14 days and no more than 30 days prior to beginning of ground and/or vegetation disturbing activities. CDFW also recommends a qualified biologist conduct on-site worker awareness training and inspect all construction materials for SJKF before use. In the event that SJKF is detected during surveys, and an ITP has not been obtained, consultation with CDFW is recommended to discuss how to avoid take or, if avoidance is not feasible, to acquire an ITP prior to initiating or resuming (whichever applies) ground disturbing activities, pursuant to Fish and Game Code section 2081, subdivision (b).

Golden Eagle (GOEA): The Project site is within the known geographic range of GOEA and there are several documented occurrences of nesting and foraging GOEA in the Project vicinity (CDFW in-house data). GOEA are known to inhabit open areas with large trees, utility towers, and cliffs for nesting (USFWS 2010). These habitat features are present near the Project site, and as such, CDFW recommends that a qualified biologist conduct focused GOEA surveys as part of the biological studies conducted in support of the MND. To avoid Project related impacts to this species, CDFW recommends incorporating survey methods outlined in the Protocol for the Interim Golden Eagle Inventory and Monitoring Protocols; and Other Recommendations guidelines (USFWS 2010). If surveys indicate the presence or potential presence of GOEA nesting territories within ½-mile of the Project site, implementation of avoidance measures are warranted. CDFW recommends that a qualified wildlife biologist be on-site during all ground-disturbing/construction related activities and that a ½-mile no-disturbance buffer be put into effect. If the ½-mile no-disturbance buffer cannot feasibly be implemented, contacting CDFW to assist with providing and implementing additional avoidance measures is suggested.

Tricolored Blackbird (TRBL): The Project site is within the known geographic range of TRBL and there is a historical occurrence documented within 1 mile of the Project site (CDFW 2024). TRBL breed within the vicinity of fresh water, primarily in marshy areas. Important sites for nesting colonies include heavy growths of cattails, tules, thistles,

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willows, blackberries, mustard, nettles, and salt cedar (Grinnell and Miller 1944). More recently, TRBL have been nesting in large colonies in alfalfa, wheat, flooded/irrigated and other low agricultural crop fields, including silage (Beedy et al. 2020, 2023). Based on aerial imagery, it appears the Project site and vicinity may contain suitable habitat for TRBL foraging and nesting. Nesting can occur synchronously, with all eggs laid within one week (Orians 1961). For these reasons, depending on timing, disturbance to nesting colonies can cause abandonment, significantly impacting TRBL populations (Beedy et al. 2020).

CDFW recommends that construction be timed to avoid the normal bird breeding season (February 1 through September 15). However, if construction must take place during that time, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting TRBL within the Project site and a 300-foot buffer no more than 10 days prior to the start of implementation to evaluate presence/absence of TRBL nesting colonies in proximity to Project activities and to evaluate potential Project-related impacts. If an active TRBL nesting colony is found during pre-activity surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer around the colony in accordance with CDFW's "Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015" (California Department of Fish and Wildlife 2015). CDFW advises that this buffer remain in place until the breeding season has ended or until a qualified biologist has determined that nesting has ceased, the birds have fledged, and are no longer reliant upon the colony or parental care for survival. If a 300-foot no-disturbance buffer is not feasible, consultation with CDFW is warranted to discuss how to avoid take or, if avoidance is not feasible, to acquire an ITP would be warranted prior to initiating or resuming (whichever applies) ground-disturbing activities, pursuant to Fish and Game Code section 2081, subdivision (b).

Western Spadefoot (WESP): The Project site is within the known geographic range of WESP and there is a documented occurrence 4 miles from the Project site from 2017 (CDFW 2024). WESP occurs primarily in grassland habitats but can be found in valley-foothill hardwood woodlands. WESP breeds in a variety of seasonally ponded features, including roadside ditches and depressions that may vary from year to year in the presence and duration of ponded water. These habitat features may be present within or near the Project site even though not observed during the biological technical studies that were conducted in 2022 in support of the MND. CDFW recommends as the addition of avoidance, minimization, and/or mitigation measures in the MND. If WESP are found during preconstruction surveys, avoidance whenever possible is encouraged via delineation and observance of a 50-foot no-disturbance buffer around burrows. If WESP are observed on the Project site, CDFW recommends that Project activities in their immediate vicinity cease, allowing individuals to leave the Project site on their own

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accord. Alternately, a qualified biologist with appropriate authorization can relocate them to a more suitable location out of harm's way.

II. EDITORIAL COMMENTS AND/OR SUGGESTIONS

Lake and Streambed Alteration Agreement: Project activities that will substantially change the bed, bank, and channel of streams and associated wetlands are subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial. It is important to note that if Project activities require notification, CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration (LSA) Agreement; therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts, a subsequent CEQA analysis may be necessary for LSA Agreement issuance. Additional information on notification requirements is available through the Central Region LSA Program at (559) 243-4593 or R4LSA@wildlife.ca.gov and the CDFW website: <https://wildlife.ca.gov/Conservation/LSA>.

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>.

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 in order for the underlying project

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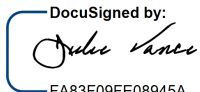
approval to be operative, vested, and final (Cal. Code Regs, tit. 14, §753.5; Fish and Game Code, §711.4; Pub. Resources Code, §21089).

CONCLUSION

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

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). If you have any questions, please contact Grant Piepkorn, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 807-1459, or by electronic mail at Grant.Piepkorn@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Julie A. Vance
Regional Manager

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References:

- Beedy, E. C., W. J. Hamilton III, R. J. Meese, D. A. Airola, and P. Pyle. 2020. Tricolored blackbird (*Agelaius tricolor*). Version 1.0 in P. G. Rodewald, editor. Birds of the world. Cornell Lab of Ornithology, Ithaca, New York, USA.
- Beedy, E. C., W. J. Hamilton III, R. J. Meese, D. A. Airola, W. S. Schackwitz, and P. Pyle. 2023. Tricolored Blackbird (*Agelaius tricolor*), version 2.0. Birds of the World. P. G. Rodewald and B. K. Keeney, editors. Cornell Lab of Ornithology, Ithaca, NY, USA.
<<https://birdsoftheworld.org/bow/species/tribla/cur/demography>>. Accessed 26 October 2023.
- California Department of Fish and Wildlife. 2024. Biogeographic information and observation system (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed 24 May 2024.
- Grinnell, J. and A. H. Miller. The Birds of California. Cooper Ornithological Club, Berkeley, California. 1944, 608 pp.
- Orians, G. 1961. The ecology of blackbird (*Agelaius*) social systems. Ecological Monographs 31:285-312.
- U.S. Fish and Wildlife Service. 2010. Golden eagle inventory and monitoring protocols; and other recommendations. Division of Migratory Bird Management, Arlington, Virginia, USA.
- U. S. Fish and Wildlife Service. 2011. Standard Recommendations for the Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance. U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, Sacramento, California.