



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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



November 18, 2024

Chelsea Starr
California Department of Transportation
2015 West Shields Avenue, Suite 100
Fresno, California 93726

Subject: Antelope Grade Vertical Curve Correction and Truck Climbing Lane
Extension (EA 05-1Q03U) (Project)
Initial Study with Proposed Negative Declaration
State Clearinghouse No. 2024050351

Dear Chelsea Starr:

The California Department of Fish and Wildlife (CDFW) received an Initial Study with Proposed Negative Declaration (ND) 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. While the comment period may have ended, CDFW respectfully requests that Caltrans still consider these comments.

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.

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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.), 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.

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 on any State or Federal list to be considered Endangered, Rare, or Threatened under CEQA. If a species can be shown to meet the criteria for Endangered, Rare, or Threatened, as specified in the CEQA Guidelines, section 15380, CDFW recommends it be fully considered in the environmental analysis for the Project.

PROJECT DESCRIPTION SUMMARY

Proponent: Caltrans

Objective: The Project will extend the existing westbound truck climbing lane and correct a vertical curve along State Route (SR) 46. The lane extension on SR 46 would be approximately 5,000 feet long and an existing 6-foot by 6-foot square concrete box culvert will be extended to the north by 30 feet. The Project includes the removal of two trees at post mile 0.0 in Kern County, vegetation trimming and removal, removal and replacement of K-rail, as well as restriping, staged construction, and installation of temporary traffic control devices.

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Location: The proposed Project is located on SR 46, east of the intersection of SR 41 and SR 46, between post miles 59.8 and 60.9 in San Luis Obispo County and post miles 0.0 and 0.9 in Kern County.

Timeframe: Project construction is estimated to begin in May 2026 and take 125 days, with approximately two weeks of construction occurring at night.

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 Project related impacts to special-status species, including but not limited to, the State candidate endangered Crotch's bumble bee (*Bombus crotchii*), the State fully protected and endangered and federally endangered blunt-nosed leopard lizard (*Gambelia sila*), the State candidate Temblor legless lizard (*Anniella alexanderæ*), , the State and Federal threatened California tiger salamander (*Ambystoma californiense*), the State threatened Swainson's Hawk (*Buteo swainsoni*), and the State candidate western burrowing owl (*Athene cunicularia hypugaea*). The ND provides impact analyses and avoidance, minimization and mitigation measures for other state-and federally-listed species as well as several non-listed special status plant and animal species that have the potential to occur in the Project area, for which CDFW has no comments.

Crotch's Bumble Bee (CBB):

Issue: The Project area is within the known geographic range of CBB and there is a recent occurrence documented approximately 0.3 miles from the Project area (CDFW 2024), but the ND does not provide an impact analysis for this species. CBB was once common throughout most of central and southern California. However, it now appears to be absent from most of their range, especially in the central portion of its historic range within central California (Hatfield et al. 2015). 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.

CBB are known to inhabit a variety of habitats, including grasslands, scrublands, openings in woodlands, areas with bare ground including vacant lots, dirt roads,

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and levees (Xerces Society et al. 2018). Based on aerial imagery, these habitat elements appear to be present within the Project area. As a result, the Project has the potential to impact CBB nesting habitat, overwintering queen refugia, and direct mortality of individuals.

CBB is particularly affected by habitat modification, pesticides, and herbicides (Xerces Society et al. 2018). Without appropriate avoidance and minimization measures for CCB, potentially significant impacts associated with the Project's activities include burrow collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of bumble bee nests, and direct mortality of individuals..

Recommended Mitigation Measures for CBB: CDFW recommends a qualified biologist conduct a habitat assessment to determine if the Project area and the immediate surrounding vicinity contain habitat suitable to support CBB. Potential nesting sites include 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 (Xerces Society et al. 2018). CBB has also been found recently nesting in dirt roads and levees (CDFW 2024). In areas of suitable habitat, CDFW recommends a qualified biologist conduct focused surveys for CBB, and their requisite habitat features following the methodology outlined in "Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species" CDFW (2023) as part of the biological technical studies in support of the ND.

If CBB is detected, then CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid take and potentially significant impacts. If ground-disturbing activities will occur during the overwintering period (October through February), consultation with CDFW is warranted to discuss how to implement Project activities and avoid take. Any detection of CBB prior to or during Project implementation warrants consultation with CDFW to discuss how to avoid take. If take cannot be avoided, take authorization prior to any ground-disturbing activities would be warranted. Take authorization would occur through CDFW's issuance of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081, subdivision (b).

Blunt-nosed Leopard Lizard (BNLL):

Issue: The Project area is within the known geographic range of the species and the Project area contains suitable habitat for BNLL, but the ND does not provide an impact analysis for this species. Suitable habitat for BNLL includes areas of grassland and upland scrub that contain requisite habitat elements, such as

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small mammal burrows. BNLL also use open space patches between suitable habitats, including disturbed sites such as unpaved access roadways. Based on a review of aerial imagery, the Project area contains annual grassland and open space areas that could be occupied by BNLL. Without appropriate protocol level BNLL surveys and mitigation measures for BNLL, potentially significant Project related impacts include habitat loss, burrow collapse, inadvertent entrapment, reduced reproductive success and health and vigor of individuals, and direct mortality of individuals.

Recommended Mitigation Measures for BNLL: CDFW recommends that a qualified biologist conduct protocol surveys in accordance with the “Approved Survey Methodology for the Blunt-nosed Leopard Lizard” (CDFW 2019) survey methodology and that the surveys be conducted during the appropriate the survey season immediately prior to construction. Please note that protocol-level surveys must be conducted on multiple dates during late spring, summer, and fall and that within these time periods there are specific protocol-level date, temperature, and time parameters which must be adhered to. This survey protocol, designed to optimize BNLL detectability, reasonably assures CDFW that ground disturbance will not result in take of this fully protected species.

In all areas within or near suitable habitat for BNLL, CDFW recommends identifying and flagging all potential burrows located within at least 50 feet of the Project limits and avoiding all Project construction activities, including equipment and materials staging and parking, within at least 50 feet of small mammal burrows.

With the passage of Senate Bill No. 147, the incidental take of BNLL may be authorized for certain categories of projects including transportation projects that do not increase highway capacity. If BNLL protocol surveys find that the Project area is occupied, or the Caltrans chooses to assume presence of BNLL for the Project, consultation with CDFW is recommended to discuss how to implement the Project and avoid take; or if avoidance is not feasible, to obtain an ITP prior to any ground disturbing activities, pursuant Fish and Game Code section 2081, subdivision (b).

Temblor Legless Lizard (TLL):

Issue: The Project area is within the known geographic range of TLL and there is a recent occurrence documented approximately 4.5 miles from the Project area (CDFW 2024), but the ND does not provide an impact analysis for this species. TLL occupy sparsely vegetated areas of desert scrub, sandy washes, and stream terraces with scattered trees. TLL can also be found under surface objects such

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as rocks, boards, driftwood, and logs. Based on aerial imagery and the recent occurrence, portions of the Project area may contain suitable habitat for TLL. Without appropriate pre-construction surveys and mitigation measures for TLL, potentially significant impacts associated with the Project's activities include inadvertent entrapment, reduced reproductive success and health and vigor of individuals, and direct mortality of individuals.

Recommended Mitigation Measures for TLL: CDFW recommends that a qualified biologist conduct focused surveys for TLL and their requisite habitat features in support of the ND. If a TLL is found prior to or during construction, CDFW recommends implementation of a minimum 50-foot no-disturbance buffer to avoid take and potentially significant impacts. In the event that a TLL is detected, 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 would be warranted. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081(b).

California Tiger Salamander (CTS):

Issue: The IS/ND includes an impact analysis for CTS but CDFW disagrees with the findings that Project activities will not impact CTS because the IS/ND incorrectly characterizes the proximity of suitable breeding habitat to the Project area and presence of upland habitat in the Project area. The IS/ND also does not describe that the Project has applied for an ITP from CDFW, pursuant to Fish and Game Code section 2081(b). The Project is within the known geographic range of CTS and potential breeding habitat is found approximately 0.25 miles from SR 46 at post mile 60.6, which puts the entire Project area within dispersal range for CTS. CTS have been determined to be physiologically capable of dispersing up to approximately 1.5 miles (Searcy and Shaffer 2011). The ND states that the nearby pond does not have the hydraulic function to support CTS breeding, but provides no data to support this assessment. Although Caltrans has subsequently applied for an ITP from CDFW for CTS, the application is only for the culvert work activities, not for the complete Project. Without appropriate pre-construction surveys and mitigation measures for CTS, potentially significant Project related impacts include burrow collapse, inadvertent entrapment, reduced reproductive success and health and vigor of individuals, and direct mortality of individuals.

Recommended Mitigation Measures for CTS: Prior to ground-disturbing activities and as part of the biological studies conducted in support of the CEQA document, CDFW recommends that a qualified biologist conduct surveys for CTS. CDFW recommends that surveys for CTS follow the "Interim Guidance on

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Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander” (USFWS 2003), or as otherwise approved by CDFW pursuant to Fish and Game Code section 2081, subdivision (a).

If CTS are found in the Project area, take authorization would occur through the acquisition of an ITP pursuant to Fish and Game Code section 2081(b). In the absence of protocol surveys, Caltrans can assume presence of CTS within the Project area and obtain an ITP for the whole Project. For information regarding ITPs, please see the following link:

<https://www.wildlife.ca.gov/Conservation/CESA>. Included in the ITP would be measures required to avoid and/or minimize direct take of CTS in the Project area. The ITP would also require measures to fully mitigate the impact of the take.

In the absence of negative findings from protocol surveys or an ITP, CDFW recommends a minimum 50-foot no-disturbance buffer be delineated around all small mammal burrows in suitable upland refugia habitat within and adjacent to the Project area. Further, CDFW recommends potential or known breeding habitat within and adjacent to the Project area be delineated with a minimum 250-foot no-disturbance buffer, though CTS are known to utilize upland habitat even greater distances from breeding sites.

Swainson’s Hawk (SWHA):

Issue: The Project area is within the known geographic range of SWHA but the IS/ND does not provide an impact analysis for this species. SWHA are known to breed within the Central Valley of California and adjacent foothills, and prefer to nest and forage in alfalfa, fallow fields, field crops, and grassland habitats with a sufficient source of small mammals (CDFG 1994). Based on aerial imagery, trees are located near the Project area that may provide suitable nesting habitat. Without appropriate pre-construction surveys and mitigation measures for SWHA, potentially significant impacts associated with the Project’s activities include nest abandonment, reduced health and vigor of chicks, and direct mortality of individuals.

Recommended Mitigation Measures for SWHA: CDFW recommends that a qualified biologist conduct surveys for nesting SWHA following the entire survey methodology developed by the SWHA Technical Advisory Committee (2000) as part of the biological technical studies conducted in support of the ND. Depending on the time between the initial survey efforts conducted in support of the ND and Project construction, CDFW recommends that additional surveys,

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following the survey methodology developed by the SWHA Technical Advisory Committee, be repeated the survey season immediately prior to construction. If Project-specific activities will take place during the SWHA nesting season (i.e., March 1 through September 15), and active SWHA nests are present, CDFW recommends a minimum ½-mile no-disturbance buffer be delineated and maintained around each nest, regardless of whether it was detected by surveys or observed incidentally.

These buffers would remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival, to prevent nest abandonment and other take of SWHA as a result of Project activities. CDFW also recommends that in the event an active SWHA nest is detected, and a ½-mile no-disturbance buffer is not feasible, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an Incidental Take Permit, pursuant to Fish and Game Code section 2081(b) is necessary to comply with CESA.

Burrowing Owl (BUOW):

Issue: The ND notes that burrowing owl (BUOW) have a moderate potential to occur and that there is suitable habitat present within and adjacent to the Project area. The California Fish and Game Commission approved BUOW as a candidate for potential listing as a protected species under CESA and published their findings in the California Regulatory Notice Register on October 25, 2024. BUOW is now considered a candidate under CESA and as such receives the same legal protection afforded to an endangered or threatened species (Fish & Game Code, Sections 2074.2 & 2085). Due to the recent change in BUOW's listing status, CDFW recommends that the ND be updated to reflect the candidacy and recommends the measures listed below be incorporated to avoid unauthorized take. The ND provides mitigation measures to survey for BUOW during the nesting season, but no measures for surveying for overwintering BUOW, and no avoidance buffers.

Recommended Mitigation Measures for BUOW: CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys following the California Burrowing Owl Consortium's (CBOC) "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC 1993) and CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFG 2012) during the survey season immediately prior to construction. If a BUOW is detected, including overwintering or nesting, CDFW recommends that a no-disturbance buffer of 500 meters be maintained around known BUOW burrows (active and inactive). If BUOW is

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observed in the Project area, 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 would be warranted. Take authorization would occur through the issuance of an ITP pursuant to Fish and Game Code section 2081, subdivision (b).

II. EDITORIAL COMMENTS AND/OR SUGGESTIONS

CDFW requests that the ND 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 biologists during the appropriate survey period(s) for each species in order to determine whether any special-status species and/or suitable habitat features may be present within the Project area. Appropriately 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 IS/ND address potential impacts to these species and provide measurable mitigation measures that, as needed, will reduce impacts to less than significant levels. Information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/SurveyProtocols>).

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

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project area to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work

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causing that change and consulting with CDFW for additional avoidance and minimization measures.

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

California Natural Diversity Database: Please note that the CNDDDB is populated by voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record, or lack of recent occurrence records, in the CNDDDB does not mean that a species is not present. To adequately assess any potential Project-related impacts to biological resources, surveys conducted by a qualified biologist during the appropriate survey period(s) and using the appropriate protocol survey methodology are warranted to determine if any special status species are present.

CEQA Significance Determinations for Biological Resources: Due to the issuance of an ITP from CDFW for CTS for at least a portion of the Project, CDFW recommends that Caltrans reclassify threshold (a) (*“Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U. S. Fish and Wildlife Service”*) to Less than Significant with Mitigation Incorporated.

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

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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

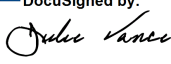
If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project 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:

FA83F09FE08945A...

Julie A. Vance
Regional Manager

Attachment

ec: Dena Gonzalez
Caltrans District 6
Dena.gonzalez@dot.ca.gov

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References:

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Xerces Society for Invertebrate Conservation, Defenders of Wildlife, and Center for Food Safety. 2018. A petition to the state of California fish and game commission to list the Crotch's bumble bee (*Bombus crotchii*), Franklin's bumble bee (*Bombus franklini*), Suckley cuckoo bumble bee (*Bombus suckleyi*), and western bumble bee (*Bombus occidentalis occidentalis*) as Endangered under the California Endangered Species Act. October 2018.

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Attachment 1

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

PROJECT: Antelope Grade Vertical Curve Correction and Truck Climbing Lane (EA 05-1Q03U)

SCH No.: 2024050351

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Crotch's bumble bee (CBB) surveys	
CBB take authorization	
Blunt-nosed leopard lizard (BNLL) surveys	
BNLL take authorization	
Temblor legless lizard (TLL) surveys	
TLL take authorization	
California tiger salamander (CTS) surveys	
CTS take authorization	
Swainson's hawk (SWHA) surveys	
SWHA take authorization	
Burrowing owl (BUOW) surveys	
BUOW take authorization	
<i>During Construction</i>	
CBB avoidance buffer	
BNLL avoidance buffer	
TLL avoidance buffer	
CTS avoidance buffer	
SWHA avoidance buffer	
BUOW avoidance buffers	