



December 2, 2024

Laura Cook
California Department of Transportation
1976 East Doctor Martin Luther King Junior Boulevard
Stockton, California 95205

Subject: Wamble Road Left-Turn Channelization (EA 10-1N330) (Project)
Initial Study with Proposed Mitigated Negative Declaration
State Clearinghouse # 2024101278

Dear Laura Cook:

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

Laura Cook, Senior Environmental Scientist

December 2, 2024

Page 2

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).

Federally Listed Species: CDFW recommends consulting with the United States Fish and Wildlife Service (USFWS) and/or National Marine Fisheries Service (NMFS) on potential impacts to Federally listed species. Take under the Federal Endangered Species Act (ESA) is more broadly defined than CESA; take under ESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS to comply with ESA is advised well in advance of any ground disturbing activities.

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

PROJECT DESCRIPTION SUMMARY

Proponent: Caltrans

Objective: The Project will install left-turn channelization for both westbound and eastbound traffic on State Route 120 turning onto Wamble Road. The left-turn channelization would include asymmetrical widening with a centerline shift to the south.

Laura Cook, Senior Environmental Scientist
December 2, 2024
Page 3

The improvements would include widening the intersection and drainage work throughout the project limits.

Location: The proposed project is located on State Route 120, at the intersection of Wamble Road, in Stanislaus County, California.

Timeframe: Construction of the proposed project is anticipated to last 6 months, beginning in March 2027.

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 threatened and federally threatened California tiger salamander (*Ambystoma californiense*), the State threatened Swainson's hawk (*Buteo swainsoni*) and tricolored blackbird (*Agelaius tricolor*), and the State Candidate Western burrowing owl (*Athene cunicularia hypugaea*), and Crotch's bumble bee (*Bombus crotchii*),

California Tiger Salamander (CTS):

Issue: The Project is within the known geographic range of CTS and the MND has determined that there is potentially suitable habitat within and near the Project area. If CTS are present near the Project site, Project activities may result in potentially significant impacts, including burrow collapse, inadvertent entrapment, reduced reproductive success, and direct mortality. The Natural Environment Study (NES) prepared for the MND indicated that CTS were not found during field surveys for the Project, although it does not appear that protocol surveys were conducted. The MND provides a determination of effect under the Federal Endangered Species Act and states that federal take authorization would be obtained and mitigation for loss of CTS upland habitat was described. However, there was no analysis of the potential for take under CESA, an analysis of potential direct impacts to CTS, or an indication that CDFW would be consulted to determine if take may occur as a result of Project activities.

Laura Cook, Senior Environmental Scientist

December 2, 2024

Page 4

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 protocol-level surveys in accordance with the USFWS “Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander” (USFWS 2003) at the appropriate time of year prior to Project construction to determine the existence and extent of CTS breeding and refugia habitat. The protocol-level surveys for CTS require more than one survey season and are dependent upon sufficient rainfall to complete. As a result, consultation with CDFW and the USFWS is recommended well in advance of beginning the surveys and prior to any planned vegetation- or ground-disturbing activities. CDFW advises that the protocol-level survey include a minimum 100-foot buffer around the Project area in all areas of wetland and upland habitat that could support CTS. Please be advised that protocol-level survey results are viable for two years after the results are reviewed by CDFW.

If CTS protocol-level surveys are not conducted, CDFW advises that a minimum 50-foot no-disturbance buffer be delineated around all small mammal burrows in suitable upland refugia habitat within and/or adjacent to the Project site. Further, CDFW recommends potential or known breeding habitat within and/or adjacent to the Project site be delineated with a minimum 250-foot no-disturbance buffer. Both upland burrow and wetland breeding no-disturbance buffers are intended to minimize impacts to CTS and CTS habitat. However, it is important to note that the 250-foot no disturbance buffer would help minimize direct impacts to the breeding habitat itself but would not avoid all likely impacts to CTS individuals; CTS utilize upland areas much farther than 250 feet from breeding pools. Alternatively, the applicant can assume presence of CTS within the Project site and obtain from an ITP in accordance with Fish and Game Code section 2081(b).

If through surveys it is determined that CTS are occupying or have the potential to occupy the Project site, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA. As stated above, in the absence of protocol surveys, the applicant can assume presence of CTS within the Project site and obtain an ITP from CDFW.

Swainson’s Hawk (SWHA):

Issue: The Project site is within the known geographic range of SWHA and there are recent occurrences documented within 2.5 miles of the Project site (CDFW 2024). The MND identifies that there are potential SWHA nest trees within and adjacent to

Laura Cook, Senior Environmental Scientist

December 2, 2024

Page 5

the Project site but did not address potential impacts to nesting SWHA. This conclusion conflicts with the findings in the NES prepared for the MND, which determined that the Project could result in impacts to nesting SWHA if present near Project activities. The measures proposed in the MND are not sufficient to prevent take of SWHA if they are nesting near the Project area during Project activities. Without appropriate avoidance and minimization measures for SWHA, potentially significant impacts associated with the Project's activities include reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

Recommended Mitigation Measures for SWHA: Given the presence of suitable nesting habitat within and near the Project site, CDFW recommends that following additional measures be added to the MND 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) the year prior to Project 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 ITP, pursuant to Fish and Game Code section 2081(b) is necessary to comply with CESA.

Tricolored Blackbird (TRBL):

Issue: The Project site is within the known geographic range of TRB, there is a historical occurrence documented within one mile of the Project site (CDFW 2024), and based on aerial imagery, it appears the Project site and vicinity may contain suitable habitat for TRBL foraging and nesting. TRBL breed within the vicinity of fresh water, primarily in marshy areas, but may nest in agricultural row crops as are present adjacent to the Project site. Important sites for nesting colonies include heavy growths of cattails, tules, thistles, willows, blackberries, mustard, nettles, and salt cedar (Grinnell and Miller 1944). Nesting can occur synchronously, with all eggs laid within one week (Orians 1961). For these reasons, depending on timing,

Laura Cook, Senior Environmental Scientist

December 2, 2024

Page 6

disturbance to nesting colonies can cause abandonment, significantly impacting TRBL populations (Beedy et al. 2020).

Recommended Mitigation Measures for TRBL: CDFW recommends that construction be timed to avoid the typical bird breeding season (February 1 through September 15). However, if construction must occur 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. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081(b) is necessary to comply with CESA.

Western Burrowing Owl (BUOW):

Issue: The MND identifies that BUOW have potential to occur and that there is suitable habitat present within and adjacent to the Project site. The California Fish and Game Commission approved BUOW as a candidate for potential listing as a protected species under CESA on October 10, 2024, published these 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 & G. Code, § 2074.2 & 2085). CDFW recommends that the MND be updated to reflect the candidacy and recommends the measures listed below be incorporated to avoid unauthorized take.

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 Project construction. If a BUOW is detected, CDFW recommends that a no-disturbance buffer of 500 meters be maintained around all BUOW burrows (active

Laura Cook, Senior Environmental Scientist

December 2, 2024

Page 7

and inactive). If BUOW and/or BUOW burrows are 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 through the acquisition of an ITP, pursuant to Fish and Game Code section 2081(b) is necessary to comply with CESA.

Crotch's Bumble Bee (CBB):

Issue: The Project is within known geographic range of CBB (CDFW 2024) and suitable habitat is present within and adjacent to the Project site however, the MND does not include a description of potential impacts to this species. The NES prepared for the MND identifies that there is potentially suitable habitat within the Project study area for CBB but concludes it would not be present based on field surveys that were not consistent with CDFW's current guidance. Lack of CBB observations during one comprehensive survey does not mean the species will not be present during Project activities. 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, and levees (Xerces Society et al. 2018; CDFW 2024). Based on information provided in the NES prepared for the MND, these habitat elements are present within and adjacent to the Project site. As a result, the Project has the potential to impact CBB nesting habitat, overwintering queen refugia, and result in 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: In areas of suitable habitat, CDFW recommends that the Project require a qualified biologist conduct focused surveys for CBB and their requisite habitat features following the methodology outlined in CDFW (2023) "Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species," during the appropriate season in the year prior to Project construction. If CBB is detected, then CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50

Laura Cook, Senior Environmental Scientist

December 2, 2024

Page 8

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 obtaining take authorization, prior to any ground disturbing activities, through the issuance of a State Incidental Take Permit (ITP) pursuant to Fish and Game Code section 2081(b), would be necessary to comply with CESA.

II. EDITORIAL COMMENTS AND/OR SUGGESTIONS

CDFW requests that the MND fully identify potential impacts to biological resources, including the aforementioned species. To adequately assess any potential impacts to biological resources, focused biological surveys should be conducted by qualified wildlife biologists/botanists during the appropriate survey period(s) for each species in order to determine whether any special-status species and/or suitable habitat features may be present within the Project area. Properly conducted biological surveys, and the information assembled from them, are essential to identify any mitigation, minimization, and avoidance measures and/or the need for additional or protocol level surveys, and to identify any Project-related impacts under CESA and other species of concern. CDFW recommends the MND 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

Laura Cook, Senior Environmental Scientist

December 2, 2024

Page 9

baseline of all identified nests. Once construction begins, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

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

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. For additional information on notification requirements, please contact our staff in the Caltrans Liaison Unit at RRR.R4@wildlife.ca.gov and the CDFW website: <https://wildlife.ca.gov/Conservation/LSA>.

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

Laura Cook, Senior Environmental Scientist
December 2, 2024
Page 10

appropriate protocol survey methodology are warranted to determine if any special status species are present.

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

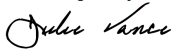
If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is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

Laura Cook, Senior Environmental Scientist
December 2, 2024
Page 11

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Laura Cook, Senior Environmental Scientist
December 2, 2024
Page 12

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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.

Laura Cook, Senior Environmental Scientist
 December 2, 2024
 Page 13

Attachment 1

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

PROJECT: Wamble Road Left-Turn Channelization (EA 10-1N330)

SCH No.: 2024101278

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Crotch's bumble bee (CBB) surveys	
CBB 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	
Tricolored blackbird (TRBL) surveys	
TRBL take authorization	
<i>During Construction</i>	
CBB avoidance buffer	
CTS avoidance buffer	
SWHA avoidance buffer	
BUOW avoidance buffer	
TRBL avoidance buffer	