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CHARLTON H. BONHAM, Director



April 22, 2025

Vivian Ho  
Senior Environmental Planner  
California Department of Transportation, District 8  
464 W Fourth Street  
San Bernardino, CA, 92401

Subject: Initial Study/Mitigated Negative Declaration  
San Bernardino County Interstate 40 Bridge and Rock Slope Protection  
Replacements (Project) State Clearinghouse No. 2025031015

Dear Vivian Ho:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (IS/MND) from California Department of Transportation (Caltrans), District 8 for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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 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

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<sup>1</sup> 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.

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 the Fish and Game Code.

## PROJECT DESCRIPTION SUMMARY

**Proponent:** Caltrans, District 8

**Objective:** The objective of the Project is to conduct bridge removal and replacement, Rock Slope Protection (RSP) removal and replacement, and bridge repair on 8 bridges on Interstate 40 (I-40), from Woods Wash Bridge at Postmile (PM) R104.89 to Homer Wash Bridge at PM R120.47, in San Bernardino County. The Project scope consists of 1) removal and replacement of the Woods Wash Bridges; 2) removal and replacement of existing RSP at the 8 bridge locations; 3) regrading work in the channel; and 4) cold plane and overlay travel lanes and shoulders. The Project will also include driving/parking off-pavement, construction of access roads, disposal/borrow site(s), equipment staging areas, drainage/culvert work, shoulder backing, ground disturbance, vegetation removal, and night work.

**Location:** The Project is located in San Bernardino County on I-40 from 0.30 miles west of Woods Wash Bridge (PM R104.6) to Homer Wash Bridge (PM R120.5) and consists of the following four locations:

Location Name	Bridge No.	I-40 PM	GPS Coordinates (Latitude, Longitude)
Woods Wash Bridge	54-0804 L/R	R104.89	34.80809 N, -115.23031 W
Ardis Ditch Bridge	54-0201 L/R	R118.66	34.83896 N, -114.99194 W
Tank Tower Bridge	54-0202 L/R	R119.50	34.84288 N, -114.97781 W
Homer Wash Bridge	54-0203 L/R	R120.47	34.84787 N, -114.96091 W

**Timeframe:** The IS/MND does not provide a timeframe for construction. CDFW recommends that the final IS/MND includes anticipated start and end dates for this Project.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Caltrans in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

## I. Mitigation Measure or Alternative and Related Impact Shortcoming

### COMMENT #1: Burrowing Owl (*Athene cunicularia hypugaea*)

#### Section #2.1.4, Pages #24-25

**Issue:** On October 10, 2024, the Fish and Game Commission determined that western burrowing owl warrants protection as a candidate species under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.). During the candidacy period, western burrowing owl will be afforded the same protection as threatened and endangered species under CESA. The Project may impact burrowing owls and its habitat. CDFW is concerned that the IS/MND does not sufficiently identify Project impacts to burrowing owl since no burrowing owl habitat assessments or focused surveys were conducted.

**Specific impact:** The IS/MND identifies that at least four potential burrowing owl burrows were observed during the 2023 surveys within and adjacent to the Project Impact Area (PIA) and loss of nesting habitat, nest destruction, nest abandonment, disturbance from construction noise and activities, increased risk of predation and degradation of suitable burrowing owl habitat may occur from Project activities.

**Why impact would occur:** The Natural Environment Study (NES) prepared for the Project determined that burrowing owls do have the potential to occur within the PIA and in the vicinity of the Project. Impacts to vegetation communities that could provide suitable foraging habitat for burrowing owls and suitable burrows may occur in association with the Project due to disturbances associated with construction along with a permanent loss of foraging habitat. Additionally, the California Natural Diversity Database (CNDDDB) dataset, [Burrowing Owl Predicted Range](#) (CDFW 2024) display a high potential for burrowing owl presence within the Project area. Project construction may result in direct mortality, population decline, or local extirpation of burrowing owl not previously identified. Burrowing owls also have a high potential to move into disturbed areas since they are adapted to highly modified habitats (Chipman et al., 2008; Coulombe, 1971).

**Evidence impact would be significant:** Habitat loss is a threat to burrowing owls (CDFG, 2012). Burrowing owls are dependent on burrows at all times of the year for survival and/or reproduction, evicting them from nesting, roosting, and satellite burrows may lead to indirect impacts or take. Loss of access to burrows will likely result in varying levels of increased stress on burrowing owls and could depress reproduction, increase predation, increase energetic costs, and introduce risks posed by having to find and compete for available burrows (CDFG, 2012). Burrowing

owls are also dependent on adjacent habitat, and forage within 600 meters of nest burrows (Rosenberg and Haley, 2004). As a candidate species, Western Burrowing Owl is granted full protection of a threatened species under CESA. Take is defined in Fish and Game Code section 86 as “hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill.” CESA allows CDFW to authorize project proponents to take state-listed threatened, endangered, or candidate species if certain conditions are met. Take must be incidental to an otherwise lawful activity. The issuance of a permit cannot jeopardize the continued existence of the species, and the impacts must be minimized and fully mitigated.

**Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant:** CDFW recommends that prior to commencing Project activities, focused and pre-construction surveys for burrowing owl be conducted by a qualified biologist in accordance with the *Staff Report on Burrowing Owl Mitigation* (CDFW 2012 or most recent version). The surveys shall include 100 percent coverage of the Project site and 500-meter buffer in adjacent habitat. To support Caltrans in reducing impacts to burrowing owl to a level less than significant, CDFW offers the following mitigation measure:

***BIO-Burrowing Owl-4 (New)***

***To avoid construction-level impacts to unidentified burrowing owls on-site, qualified biologists shall conduct focused burrowing owl surveys during the breeding and non-breeding season in accordance with the Staff Report on Burrowing Owl Mitigation (CDFW, 2012). The survey shall cover the Project site and a 500-meter buffer, where legally accessible. A preconstruction survey shall be conducted within 14 days prior to the start of construction activities (see below).***

***Pre-construction take avoidance surveys for this species shall be conducted within 14 days prior to the start of ground disturbance and 24 hours prior to construction to determine the presence or absence of this species within the Project footprint. A report shall be submitted by a qualified and agency-approved biologist to CDFW. The Project footprint shall be clearly demarcated in the field by the Project engineers and biologist prior to the commencement of the pre-construction take avoidance surveys. The surveys shall follow the guidance of the Staff Report on Burrowing Owl Mitigation (CDFW, 2012).***

***Depending on the Project activity type and associated disturbance, a minimum avoidance buffer distance of 50 meters (165 feet) to 100 meters (330 feet) during the nonbreeding season (September through January) and 100 meters (330 feet) to 250 meters (825 feet) during the breeding season (February through August) shall be maintained between active burrows and construction***

***activities. A qualified biologist shall monitor the burrowing owls for any sign of distress and adjust the buffers as necessary to ensure no take occurs.***

***If active burrows are present within the Project footprint and complete avoidance is infeasible, the Project proponent shall not undertake Project activities and Project activities shall be postponed until the appropriate authorization (i.e. CESA incidental take permit under the California Fish and Game Code § 2081) is obtained.***

***Should permanent loss of western burrowing owl habitat occur the ratio of acquisition to loss must be at a minimum of 1:1. The ratio shall be higher for occupied and irreplaceable habitats. The mitigation lands may require habitat enhancements including enhancement or expansion of burrows for breeding, shelter and dispersal opportunity, and removal or control of population stressors. Permanent protection of mitigation land shall be established through a conservation easement deeded to a nonprofit conservation organization or public agency with a conservation mission, and include development and implementation of a mitigation land management plan to address long-term ecological sustainability and maintenance of the site for burrowing owls, and funding for the maintenance and management of mitigation land through the establishment of a long-term funding mechanism such as an endowment.***

## **COMMENT #2: Nesting Birds**

### **Section #2.4.3, Page #27**

**Issue:** The Project includes suitable habitat for nesting birds. Consequently, measure **BIO-Avian-1: Preconstruction Nesting Bird Preconstruction Surveys** considers a preconstruction nesting bird survey during the nesting season. However, measure **BIO-Avian-1** defines the nesting season as generally being from February 1 to September 30, but the timing of the bird nesting season varies greatly depending on several factors, such as the bird species, weather conditions in any given year, and long-term climate changes (e.g., drought, warming, etc.). CDFW staff have observed that changing climate conditions may result in the nesting bird season occurring earlier and/or later in the year than historical nesting season dates. CDFW recommends the completion of a nesting bird survey regardless of time of year to ensure compliance with all applicable laws pertaining to nesting and to avoid take of nests.

**Specific impact:** The IS/MND identifies the Project has the potential to directly impact special-status bird species and their habitats by the removal of suitable habitat for construction. Potential impacts to suitable nesting bird habitat may occur

in association with the Project due to disturbances associated with vegetation removal, ground disturbance, shoulder backing, equipment staging areas, and driving/parking off pavement.

**Evidence impact would be significant:** It is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Fish and Game Code sections 3503, 3503.5, and 3513 afford protective measures for all nests, all eggs, and any raptors or migratory birds as follows: 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 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. 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.).

**Recommended potentially feasible mitigation measure:** CDFW recommends the inclusion of the Mitigation Measure below, as revised (edits are in ~~strikethrough~~ and additions are in ***bold italics***) in the final MND to ensure impacts to birds are mitigated to a level of less than significant.

***BIO-Avian-1: Preconstruction Nesting Bird Surveys (Revised)***

~~If Project activities cannot avoid the nesting season, generally regarded as February 1 through September 30, then~~ ***Regardless of the time of year, a pre-construction survey shall be performed to verify absence of nesting birds.*** ~~Preconstruction~~ nesting bird surveys must be conducted 3 days prior to construction by a qualified biologist to locate and avoid nesting birds. If an active avian nest is located, a no construction buffer ***shall*** ~~may~~ be established and monitored by the qualified biologist daily until the young have fledged or the nest is deemed inactive. ***The Project site will need to be re-surveyed if there is a lapse in construction activities for more than 3 days.***

**COMMENT #3: Sensitive and Native Plant Species**

**Issue:** CDFW is concerned that the Project may affect sensitive plant species with the potential to occur within the Project area. CNDDDB, Calscap and Calflora identify several sensitive plant species including Abrams' spurge (*Euphorbia abramsiana*) with a California rare plant ranking 2B.2, Emory's crucifixion-thorn (*Castela emoryi*) with a California rare plant ranking 2B.2, and Playa milk-vetch (*Astragalus*

*allochrous* var. *playanus*) with a California rare plant ranking 2B.2 that have potential suitable habitat in the Project area.

**Specific Impact:** Vegetation removal, and other ground disturbances are likely to result in direct mortality of sensitive plants.

**Why impact would occur:** Take of any CESA-listed plant species that results from the Project is prohibited, except as authorized by State law (Fish & Game Code, §§ 2080, 2085; California Code of Regulations, tit. 14, § 786.9). Plants constituting California Rare Plant Ranks 1A, 1B, 2A, and 2B generally meet the criteria of a CESA-listed species and should be considered as endangered, rare or threatened species for the purposes of CEQA analysis. Likewise, CDFW considers State listed communities 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. These ranks can be obtained by querying the CNDDDB and are included in the [California Native Plant Society Vegetation Manual](#).

**Evidence impact would be significant:** According to a search on CNDDDB, Calscape, and Calflora, the Project has suitable habitat for at least 26 native and rare plant species. However, rare plant surveys have not been conducted in accordance with CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities* (CDFW, 2018).

**Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant:** To avoid impacts to sensitive plant species, CDFW recommends the adoption of MM BIO- 1 below.

***BIO-Plant-1 Botanical Field Surveys (New)***

***Prior to Project implementation, and during the appropriate season, a qualified biologist shall conduct botanical field surveys within the Project area following protocols set forth in the California Department of Fish and Wildlife's (CDFW) 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). The surveys shall be conducted by a CDFW approved botanist(s) experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant community ecology and classification, familiar with the plants of the area, including special status and locally significant plants, and familiar with the appropriate state and federal statutes related to plants and plant collecting. The botanical field surveys shall be conducted at the appropriate time of year when plants will both be evident and identifiable (usually, during flowering or fruiting) and, in a manner, which maximizes the***

***likelihood of locating special-status plants and sensitive natural communities that may be present. Botanical field surveys shall be conducted floristic in nature, meaning that every plant taxon that occurs in the Project area is identified to the taxonomic level necessary to determine rarity and listing status.***

***If special-status plant species are observed during the preconstruction rare plant survey(s) within the development area of the Project, the Project shall be designed to reduce impacts to these species through the establishment of buffers, to the extent feasible. Buffer distances will be determined by the qualified biologist, typically 50 feet or greater from an identified special-status plant species, unless the qualified biologist determines a reduced buffer would suffice to avoid impacts to the species.***

***If avoidance of special-status plant species is not feasible, a Special-Status Plant Relocation Plan shall be developed and implemented. The Special-Status Plant Relocation Plan shall address mitigation for special-status plants, including but not limited to: topsoil salvage to preserve seed bank and management of salvaged topsoil; seed collection, storage, possible nursery propagation, and planting; salvage and planting of bulbs as feasible; location of onsite receptor sites; land protection instruments for receptor areas; and funding mechanisms. The Special-Status Plant Relocation Plan shall include methods, monitoring, reporting, success criteria, adaptive management, and contingencies for achieving success. The plan shall be prepared for CDFW's review, approval, and implementation prior to the commencement of initial site clearing activities. All special-status plant species identified on site shall be mapped onto a site-specific aerial photograph and topographic map and included on the construction, grading, fuel modification, and landscape plans.***

#### **COMMENT #4: Bats**

##### **Initial Study/Mitigated Negative Declaration**

**Issue:** The Project may impact potentially suitable habitat for bats and avoidance and minimization measures were not proposed within the IS/MND to avoid impacts to bats.

**Specific Impact:** On page 36 of the IS/MND, the Project area was reported to support a potential habitat core for pallid bat (*Antrozous pallidus*) in addition the Project area is located within CNDDDB's current range for Townsend's big-eared bat (*Corynorhinus townsendii*), a Species of Special Concern (SSC). However, avoidance and minimization measures were not proposed within the IS/MND.



**Why Impact Would Occur:** The bridges and culverts on-site could provide refuge and serve as potential roosting sites for bats.

**Evidence impact would be significant:** Bats are considered non-game mammals and are afforded protection by State law from take and/or harassment (Fish & G. Code, § 4150; Cal. Code of Regs, § 251.1). Several bat species are considered Species of Special Concern. Impacts on SSC could require a mandatory finding of significance under CEQA (CEQA Guidelines, § 15065). Impacts on bats, either directly or indirectly through disturbances to roosts and loss of habitat, could be a significant impact.

**Recommended potentially feasible mitigation measure to reduce impacts to less than significant:** CDFW offers the following Mitigation Measure for inclusion in the Final IS/MND.

***BIO-Bat-1: Bat Pre-Construction Surveys (New)***

***All suitable roosting and foraging habitat for local or migratory bat species known to the Project area, including special-status species, found within the Project site and adjacent land shall be surveyed throughout one year, prior to initial site clearing activities. The surveys shall be completed by a qualified bat biologist whose resume shall be reviewed and approved by CDFW. Surveys shall include determination of the approximate size of the colony(s) and species present. The surveys shall include a combination of nighttime emergence counts and acoustic techniques (full spectrum bat acoustic detectors) appropriate for the roosting habitat and time of year, visual and aural surveys (observation during foraging period), and inspection for suitable habitat and bat sign (e.g. guano). Surveys shall be conducted during the spring, summer, fall, and winter to determine how the habitat is used by bats throughout the year, including foraging patterns and habitat, and the presence overwintering bats, with at least two surveys conducted during the maternity season to determine a pre- and post-volant count of colonies present.***

***If roosting bats, of any status, are found during the surveys, the bats and roosts shall be avoided to the maximum extent practicable with consideration of the most disturbing Project activities and their effect (e.g. demolition and night-time lighting). A Bat Management Plan prepared by the qualified bat biologist identifying situation-specific and species-specific avoidance and minimization measures to reduce impacts to roosting and foraging bats shall be prepared for CDFW's review, approval, and implementation prior to the commencement of initial site clearing activities.***

***The Bat Management Plan shall include, as appropriate to the findings of the surveys and roosting habitat affected, a construction schedule to avoid***

***roosting season, spatial and temporal avoidance measures, non-disturbance buffers, passive exclusion of bats outside of the maternity season (if necessary), and identification of species-specific replacement or alternative habitat to mitigate for permanent maternity or night roosting habitat loss. If roosts cannot be avoided or it is determined that construction activities will cause roost abandonment, a mitigation plan addressing exclusion and passive relocation procedures and impact compensation will be developed. The mitigation plan will be developed in consultation with CDFW and the qualified bat biologist. Roost and foraging habitat shall be replaced in-kind prior to any exclusion or in a timing approved by CDFW. Any exclusion and passive relocation efforts shall avoid periods of sensitive activity (e.g. hibernation or maternity season) and may require several seasons for bats to discover alternative roosting sites.***

## **II. Additional Comments**

### **COMMENT #5: Desert Kit Fox (*Vulpes macrotis*)**

Desert kit fox is protected as a fur-bearing mammal under title 14 of the California Code of Regulations (Chap. 5, §460) and may not be taken at any time. Because desert kit fox exhibits high fidelity to natal dens, it is crucial to adequately assess whether desert kit fox is present on the Project site well in advance of commencing Project activities. If desert kit fox is found on-site during breeding season, it could delay Project activities until appropriate buffers can be established on the Project site.

Desert kit foxes also have the potential to move onto the Project site between the time that the biological surveys were originally conducted in 2023. CDFW considers the Project as having the potential to impact desert kit fox. While CDFW appreciates the inclusion of mitigation measure BIO-Kit Fox-2: Desert Kit Fox Den Complex Monitoring, Passive Relocation, and Stop Work Restrictions, CDFW recommends the IS/MND also include an analysis of impacts to desert kit fox, including the findings from focused surveys for desert kit fox covering the entirety of the Project footprint, and to incorporate appropriate avoidance, minimization, and mitigation measures based on findings from the surveys considering the IS/MND identifies a potential habitat core for Desert kit fox within the Project area (Section #2.1.4, page #28).

### **COMMENT #6: Staging Areas**

CDFW appreciates the incorporation of BIO-General-1, regarding equipment staging and storing, and stockpiling of materials. CDFW recommends the revisions below

(edits are in ~~strike through~~ and **bold italics**) in consideration of Fish and Game Code section 1602.

#### **BIO-General-1: Equipment Staging, Storing, and Borrow Sites (Revised)**

All staging, storing, and borrow sites require the approval of the Caltrans Biologist. ***Stockpiles shall be maintained to avoid the spread of invasive plants and shall not be placed at locations subject to Fish and Game Code section 1602. Materials, including spoils and equipment, shall not be placed at locations subject to Fish and Game Code section 1602.***

#### **COMMENT #7: Invasive Weed Control**

CDFW appreciates the incorporation of Bio-General-16, regarding the control of invasive plants. CDFW recommends the revisions below (edits are in ~~strike through~~ and **bold italics**) in consideration of fish and wildlife resources.

#### ***BIO-General-16: Invasive Weed Control (Revised)***

To address impacts to natural communities of concern, desert tortoise critical habitat, and rare insect host plant species, a qualified biologist must identify invasive species within the PIA during access road construction, shoulder backing, ground disturbance, and vegetation removal. Treatment and disposal methods must be approved by the Caltrans biologist prior to vegetation removal. ***A specific targeted approach shall be implemented for any herbicide application by avoiding species that are not intended to be removed and by reducing herbicide application to the smallest possible radius around plant species that are selected for application. All herbicides utilized adjacent to Fish and Game Code section 1602 resources and other sensitive aquatic habitat areas shall be registered for aquatic use by the California Department of Pesticide Regulation (CDPR). Herbicide sprays in these areas shall only be used when wind speeds measure less than 10 mph. The mixture shall contain a dye (registered for aquatic use by CDPR) to show overspray and shall be conducted in a manner to minimize overspray onto adjacent native vegetation.***

#### **COMMENT #8: Preconstruction Surveys and Species Avoidance**

CDFW appreciates the incorporation of BIO-General-4: Preconstruction Surveys and BIO-General-6: Species Avoidance. CDFW recommends the revisions below (edits are in ~~strike through~~ and additions in **bold italics**) in consideration of special status species and vegetation communities.

#### ***BIO-General-4: Preconstruction Surveys (Revised)***

Three days prior to construction, preconstruction American badger, rare plants, and sensitive natural community surveys must be conducted by the qualified biologist, up to the limits of the Caltrans Row and following current American badger survey protocols. Sensitive natural communities and rare plants outside of the approved PIA and within Caltrans ROW must be flagged for visual identification to construction personnel for work avoidance. Sensitive Natural Communities and rare plants for avoidance detected shall be flagged or fenced off with ESA high visibility fencing. If an **any bighorn sheep, mountain lion**, desert kit fox, or American badger or signs of American badger, catclaw acacia – desert lavender – chuparosa scrub, Desert willow – smoketree wash woodland, or other Natural community, other than what is described on the plans and specifications, are located, the Resident Engineer and Caltrans Biologist must be contacted and additional measures and/or agency coordination **shall** may be required, **which could include compensatory mitigation for impacts to those species and/or habitats.**

***Should permanent loss of sensitive species and/or habitats occur the ratio of acquisition to loss must be at a minimum of 1:1. The ratio shall be higher for occupied and irreplaceable habitats. Permanent protection of mitigation land shall be established through a conservation easement deeded to a nonprofit conservation organization or public agency with a conservation mission, and include development and implementation of a mitigation land management plan to address long-term ecological sustainability and maintenance of the site, and funding for the maintenance and management of mitigation land through the establishment of a long-term funding mechanism such as an endowment.***

#### ***BIO-General-6: Species Avoidance (Revised)***

If during Project activities insect host plants, nesting birds, burrowing owl, desert tortoise, **bighorn sheep, mountain lion, desert kit fox**, or American badger burrows are discovered within the Project Site, all construction activities must stop within 10 feet for rare insect host plants, 100 feet for non-passerine nesting birds, 300 feet for nesting passerine species, 500 feet for raptors or federal/State listed birds, 265 feet for burrowing owls, **500 feet for desert kit fox**, ~~50~~**500** feet for desert tortoises, and 16 to 25 feet around single American badger burrows and 65 feet around clusters of American badger burrows. The Caltrans Biologist and Resident Engineer must be notified. Coordination with CDFW and USFWS **shall** may be required prior to restarting activities, **if full avoidance is not achievable.**

#### **COMMENT #9: Desert Tortoise (*Gopherus agassizii*)**

CDFW appreciates the incorporation of BIO-Reptile 4, and BIO-DT-2, regarding desert tortoise. CDFW recommends the revisions below (edits are in ~~strikethrough~~ and additions in ***bold italics***) in consideration of fish and wildlife resources.

***BIO-Reptile-4: Authorized Biologist Clearance Surveys (Revised)***

Clearance desert tortoise surveys must be conducted by the qualified biologist 3 days prior to Project activities within the Project footprint before temporary desert tortoise fence is erected. If a desert tortoise is located, ~~the Resident Engineer and Caltrans Biologist must be contacted, and additional measures and/or agency coordination may be required. Desert tortoise removed from work areas may be moved from harm's way to the nearest suitable habitat or translocated, following most recent CDFW and USFWS guidelines. A CDFW 2081 permit will be required if a desert tortoise is handled. Work on other bridges may continue if no desert tortoises are found within the Project footprint.~~ **An incidental take permit (ITP) for desert tortoise shall be obtained prior to initiation of all ground disturbing activities. The Project proponent shall adhere to measures and conditions set forth within the ITP. Mitigation for direct impacts shall be fulfilled through conservation of suitable Mojave Desert tortoise habitat through the purchase of mitigation bank credits or land acquisition determined through coordination with USFWS and the California Department of Fish and Wildlife.**

***BIO-DT-2: Desert Tortoise Impacts (Revised)***

Prior to completion of Project related activities, areas permanently impacted by the Project will be mitigated at a ***minimum 3*** 4:1 ratio. Temporary impacts will be restored to their original condition.

**COMMENT #10: Aquatic Resources Restoration**

CDFW appreciates the incorporation of BIO-General 18 regarding aquatic resources restoration. CDFW recommends the revisions below (edits are in ~~strikethrough~~ and additions in ***bold italics***) in consideration of fish and wildlife resources.

***BIO-General-18: Aquatic Resources Restoration (Revised)***

***Caltrans shall notify CDFW pursuant to Fish and Game Code section 1602 and obtain authorization prior to initiating Project activities within any river, stream, or lake.*** After construction activities are complete, temporarily impacted aquatic resources will be restored to original and permanently impacted resources will be restored at a ***minimum 3*** 4:1 ratio ***through on-site restoration activities, suitable CDFW-approved mitigation/conservation bank credits, permittee-responsible mitigation, or through a combination of any of these.***

## 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 the California Natural Diversity Database (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

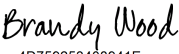
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental 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 in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Gabriella Tolley, Environmental Scientist, at [Gabriella.Tolley@wildlife.ca.gov](mailto:Gabriella.Tolley@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
4D759253408941E...

Brandy Wood  
Environmental Project Manager

ec: Office of Planning and Research, State Clearinghouse, Sacramento

## REFERENCES

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CDFW recommends the following language be incorporated into the final IS/MND for the Project.

Mitigation Measure		Timing	Responsible Party
<b>BIO-Burrowing Owl-4</b>	<p>To avoid construction-level impacts to unidentified burrowing owls on-site, qualified biologists shall conduct focused burrowing owl surveys during the breeding and non-breeding season in accordance with the Staff Report on Burrowing Owl Mitigation (CDFG, 2012). The survey shall cover the Project site and a 500-meter buffer, where legally accessible. A preconstruction survey shall be conducted within 14 days prior to the start of construction activities (see below).</p> <p>Pre-construction take avoidance surveys for this species shall be conducted within 14 days prior to the start of ground disturbance and 24 hours prior to construction to determine the presence or absence of this species within the Project footprint. A report shall be submitted by a qualified and agency-approved biologist to CDFW. The Project footprint shall be clearly demarcated in the field by the Project engineers and biologist prior to the commencement of the pre-construction take</p>	Prior to commencing ground or vegetation disturbing activities	Project Proponent



	<p>avoidance surveys. The surveys shall follow the guidance of the Staff Report on Burrowing Owl Mitigation (CDFG, 2012).</p> <p>Depending on the Project activity type and associated disturbance, a minimum avoidance buffer distance of 50 meters (165 feet) to 100 meters (330 feet) during the nonbreeding season (September through January) and 100 meters (330 feet) to 250 meters (825 feet) during the breeding season (February through August) shall be maintained between active burrows and construction activities. A qualified biologist shall monitor the burrowing owls for any sign of distress and adjust the buffers as necessary to ensure no take occurs.</p> <p>If active burrows are present within the Project footprint and complete avoidance is infeasible, the Project proponent shall not undertake Project activities and Project activities shall be postponed until the appropriate authorization (i.e. CESA incidental take permit under the California Fish and Game Code § 2081) is obtained.</p> <p>Should permanent loss of western burrowing owl habitat</p>		
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	<p>occur the ratio of acquisition to loss must be at a minimum of 1:1. The ratio shall be higher for occupied and irreplaceable habitats. The mitigation lands may require habitat enhancements including enhancement or expansion of burrows for breeding, shelter and dispersal opportunity, and removal or control of population stressors. Permanent protection of mitigation land shall be established through a conservation easement deeded to a nonprofit conservation organization or public agency with a conservation mission, and include development and implementation of a mitigation land management plan to address long-term ecological sustainability and maintenance of the site for burrowing owls, and funding for the maintenance and management of mitigation land through the establishment of a long-term funding mechanism such as an endowment.</p>		
<p><b>BIO-Avian-1: Preconstruction Nesting Bird Surveys</b></p>	<p>Regardless of the time of year, a pre-construction survey shall be performed to verify absence of nesting birds. Preconstruction nesting bird surveys must be conducted 3 days prior to construction by a qualified</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

	<p>biologist to locate and avoid nesting birds. If an active avian nest is located, a no construction buffer shall be established and monitored by the qualified biologist daily until the young have fledged or the nest is deemed inactive. The Project site will need to be re-surveyed if there is a lapse in construction activities for more than 3 days.</p>		
<p><b>BIO-Plant-1          Botanical Field          Surveys</b></p>	<p>Prior to Project implementation, and during the appropriate season, a qualified biologist shall conduct botanical field surveys within the Project area following protocols set forth in the California Department of Fish and Wildlife's (CDFW) 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). The surveys shall be conducted by a CDFW approved botanist(s) experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant community ecology and classification, familiar with the plants of the area, including special status and locally significant plants, and familiar with the appropriate state and federal statutes related to</p>	<p>Prior to commencing ground or vegetation disturbing activities.</p>	<p>Project Proponent</p>

	<p>plants and plant collecting. The botanical field surveys shall be conducted at the appropriate time of year when plants will both be evident and identifiable (usually, during flowering or fruiting) and, in a manner, which maximizes the likelihood of locating special-status plants and sensitive natural communities that may be present. Botanical field surveys shall be conducted floristic in nature, meaning that every plant taxon that occurs in the Project area is identified to the taxonomic level necessary to determine rarity and listing status.</p> <p>If special-status plant species are observed during the preconstruction rare plant survey(s) within the development area of the Project, the Project shall be designed to reduce impacts to these species through the establishment of buffers, to the extent feasible. Buffer distances will be determined by the qualified biologist, typically 50 feet or greater from an identified special-status plant species, unless the qualified biologist determines a reduced buffer would suffice to avoid impacts to the species.</p> <p>If avoidance of special-status plant species is not feasible, a</p>		
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	<p>Special-Status Plant Relocation Plan shall be developed and implemented. The Special-Status Plant Relocation Plan shall address mitigation for special-status plants, including but not limited to: topsoil salvage to preserve seed bank and management of salvaged topsoil; seed collection, storage, possible nursery propagation, and planting; salvage and planting of bulbs as feasible; location of onsite receptor sites; land protection instruments for receptor areas; and funding mechanisms. The Special-Status Plant Relocation Plan shall include methods, monitoring, reporting, success criteria, adaptive management, and contingencies for achieving success. The plan shall be prepared for CDFW's review, approval, and implementation prior to the commencement of initial site clearing activities. All special-status plant species identified on site shall be mapped onto a site-specific aerial photograph and topographic map and included on the construction, grading, fuel modification, and landscape plans.</p>		
<p><b>BIO-Bat-1: Bat Pre-Construction Surveys</b></p>	<p>All suitable roosting and foraging habitat for local or migratory bat species known to the Project area, including special-status species, found</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

	<p>within the Project site and adjacent land shall be surveyed throughout one year, prior to initial site clearing activities. The surveys shall be completed by a qualified bat biologist whose resume shall be reviewed and approved by CDFW. Surveys shall include determination of the approximate size of the colony(s) and species present. The surveys shall include a combination of nighttime emergence counts and acoustic techniques (full spectrum bat acoustic detectors) appropriate for the roosting habitat and time of year, visual and aural surveys (observation during foraging period), and inspection for suitable habitat and bat sign (e.g. guano). Surveys shall be conducted during the spring, summer, fall, and winter to determine how the habitat is used by bats throughout the year, including foraging patterns and habitat, and the presence overwintering bats, with at least two surveys conducted during the maternity season to determine a pre- and post-volant count of colonies present.</p> <p>If roosting bats, of any status, are found during the surveys, the bats and roosts shall be avoided to the maximum</p>		
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	<p>extent practicable with consideration of the most disturbing Project activities and their effect (e.g. demolition and night-time lighting). A Bat Management Plan prepared by the qualified bat biologist identifying situation-specific and species-specific avoidance and minimization measures to reduce impacts to roosting and foraging bats shall be prepared for CDFW's review, approval, and implementation prior to the commencement of initial site clearing activities.</p> <p>The Bat Management Plan shall include, as appropriate to the findings of the surveys and roosting habitat affected, a construction schedule to avoid roosting season, spatial and temporal avoidance measures, non-disturbance buffers, passive exclusion of bats outside of the maternity season (if necessary), and identification of species-specific replacement or alternative habitat to mitigate for permanent maternity or night roosting habitat loss. If roosts cannot be avoided or it is determined that construction activities will cause roost abandonment, a mitigation plan addressing exclusion and passive relocation procedures and impact compensation will be developed. The mitigation</p>		
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	<p>plan will be developed in consultation with CDFW and the qualified bat biologist. Roost and foraging habitat shall be replaced in-kind prior to any exclusion or in a timing approved by CDFW. Any exclusion and passive relocation efforts shall avoid periods of sensitive activity (e.g. hibernation or maternity season) and may require several seasons for bats to discover alternative roosting sites.</p>		
<p><b>BIO-General-1: Equipment Staging, Storing, and Borrow Sites</b></p>	<p>All staging, storing, and borrow sites require the approval of the Caltrans Biologist. Stockpiles shall be maintained to avoid the spread of invasive plants and shall not be placed at locations subject to Fish and Game Code section 1602. Materials, including spoils and equipment, shall not be placed at locations subject to Fish and Game Code section 1602.</p>	<p>During Project activities</p>	<p>Project Proponent</p>
<p><b>BIO-General-16: Invasive Weed Control</b></p>	<p>To address impacts to natural communities of concern, desert tortoise critical habitat, and rare insect host plant species, a qualified biologist must identify invasive species within the PIA during access road construction, shoulder backing, ground disturbance, and vegetation removal. Treatment and disposal methods must be approved by the Caltrans biologist prior</p>	<p>During Project activities</p>	<p>Project Proponent</p>



	<p>to vegetation removal. A specific targeted approach shall be implemented for any herbicide application by avoiding species that are not intended to be removed and by reducing herbicide application to the smallest possible radius around plant species that are selected for application. All herbicides utilized adjacent to Fish and Game Code section 1602 resources and other sensitive aquatic habitat areas shall be registered for aquatic use by the California Department of Pesticide Regulation (CDPR). Herbicide sprays in these areas shall only be used when wind speeds measure less than 10 mph. The mixture shall contain a dye (registered for aquatic use by CDPR) to show overspray and shall be conducted in a manner to minimize overspray onto adjacent native vegetation</p>		
<p><b>BIO-General-4: Preconstruction Surveys</b></p>	<p>Three days prior to construction, preconstruction American badger, rare plants, and sensitive natural community surveys must be conducted by the qualified biologist, up to the limits of the Caltrans Row and following current American badger survey protocols. Sensitive natural communities and rare plants outside of the approved PIA and within</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

	<p>Caltrans ROW must be flagged for visual identification to construction personnel for work avoidance. Sensitive Natural Communities and rare plants for avoidance detected shall be flagged or fenced off with ESA high visibility fencing. If any bighorn sheep, mountain lion, desert kit fox, or American badger or signs of American badger, catclaw acacia – desert lavender – chuparosa scrub, Desert willow – smoketree wash woodland, or other Natural community, other than what is described on the plans and specifications, are located, the Resident Engineer and Caltrans Biologist must be contacted and additional measures and/or agency coordination shall be required, which could include compensatory mitigation for impacts to those species and/or habitats.</p> <p>Should permanent loss of sensitive species and/or habitats occur the ratio of acquisition to loss must be at a minimum of 1:1. The ratio shall be higher for occupied and irreplaceable habitats. Permanent protection of mitigation land shall be established through a conservation easement deeded to a nonprofit conservation organization or</p>		
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	<p>public agency with a conservation mission, and include development and implementation of a mitigation land management plan to address long-term ecological sustainability and maintenance of the site, and funding for the maintenance and management of mitigation land through the establishment of a long-term funding mechanism such as an endowment.</p>		
<p><b>BIO-General-6: Species Avoidance</b></p>	<p>If during Project activities insect host plants, nesting birds, burrowing owl, desert tortoise, bighorn sheep, mountain lion, desert kit fox, or American badger burrows are discovered within the Project Site, all construction activities must stop within 10 feet for rare insect host plants, 100 feet for non-passerine nesting birds, 300 feet for nesting passerine species, 500 feet for raptors or federal/State listed birds, 265 feet for burrowing owls, 500 feet for desert kit fox, 500 feet for desert tortoises, and 16 to 25 feet around single American badger burrows and 65 feet around clusters of American badger burrows. The Caltrans Biologist and Resident Engineer must be notified. Coordination with CDFW and USFWS shall be required prior to restarting</p>	<p>During Project activities</p>	<p>Project Proponent</p>

	activities, if full avoidance is not achievable.		
<b>BIO-Reptile-4: Authorized Biologist Clearance Surveys</b>	Clearance desert tortoise surveys must be conducted by the qualified biologist 3 days prior to Project activities within the Project footprint before temporary desert tortoise fence is erected. If a desert tortoise is located, An incidental take permit (ITP) for desert tortoise shall be obtained prior to initiation of all ground disturbing activities. The Project proponent shall adhere to measures and conditions set forth within the ITP. Mitigation for direct impacts shall be fulfilled through conservation of suitable Mojave Desert tortoise habitat through the purchase of mitigation bank credits or land acquisition determined through coordination with USFWS and the California Department of Fish and Wildlife.	Prior to commencing ground or vegetation disturbing activities	Project Proponent
<b>BIO-General-18: Aquatic Resources Restoration</b>	Caltrans shall notify CDFW pursuant to Fish and Game Code section 1602 and obtain authorization prior to initiating Project activities within any river, stream, or lake. After construction activities are complete, temporarily impacted aquatic resources will be restored to original and permanently impacted resources will be restored at a minimum 3:1 ratio through on-	Prior to or after commencing Project depending on mitigation type	Project Proponent

	site restoration activities, suitable CDFW-approved mitigation/conservation bank credits, permittee-responsible mitigation, or through a combination of any of these.		
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