



October 13, 2023

Dianna Beck
District 5 Environmental Division
California Department of Transportation
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San Luis Obispo, California 93401
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**Subject: State Route 46 Corridor Improvement Project – Antelope Grade Section (Project) (EA 05-3307E)
Subsequent Initial Study with Proposed Mitigated Negative Declaration
SCH No. 2003041036**

Dear Dianna Beck:

The California Department of Fish and Wildlife (CDFW) received a Subsequent Initial Study with Proposed Mitigated Negative Declaration (SIS/MND) from the California Department of Transportation (Caltrans), as Lead Agency, for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under 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

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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proposed, for example, the Project may be subject to CDFW's lake and streambed alteration (LSA) 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 will 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.

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 (California Code of Regulations, Title 14, Chapter 3, § 15380), CDFW recommends it be fully considered in the environmental analysis for this Project.

PROJECT DESCRIPTION SUMMARY

Proponent: Caltrans

Objective: Caltrans proposes to convert a two-lane 3.6-mile section of State Route (SR) 46 in San Luis Obispo and Kern Counties to a four-lane expressway with a 62-foot median on a new, north side, alignment. The Project would connect the existing four-lane expressway to the east (Kern County) with the currently-under-construction four-lane expressway (commonly identified as the "Wye" section) to the west (San Luis Obispo County), creating a continuous corridor of four-lane expressway from Interstate 5 in Kern County to SR101 in San Luis Obispo County.

Location: The proposed project is located on SR 46 in San Luis Obispo County from post mile 57.3 to 60.8 and Kern County from post mile 0.0 to 0.4, near Antelope Road east of the unincorporated community of Cholame.

Timeframe: Construction is scheduled to begin in 2026.

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. The attached Mitigation Monitoring and Reporting Program (MMRP) provides a summary of

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CDFW's additional impact minimization, mitigation and monitoring recommendations that are described below. Editorial comments or other suggestions may also be included to improve the document.

Based on our review of habitat conditions at and near the Project and proposed Project activities in the SIS/MND, CDFW is concerned regarding potential impacts to the State candidate Crotch's bumblebee (*Bombus crotchii*) and to pronghorn antelope (*Antilocapra americana*).

Project Description and Related Impacts

COMMENT 1: Crotch's Bumble Bee (CBB)

Issue: CBB are known to inhabit areas of grasslands and scrub that contain requisite habitat elements for nesting, such as small mammal burrows and bunch/thatched grasses. 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 California's Central Valley (Hatfield et al. 2015). Analyses by the Xerces Society for Invertebrate Conservation, Defenders of Wildlife, Center for Food Safety (2018) suggest there have been sharp declines in relative abundance by 98% and persistence by 80% over the last ten years. As noted in the SIS/MND, the Project site contains California annual and perennial grassland, coastal scrub, and other vegetation alliances. As such, CBB could potentially use the habitats within the Project site.

Suitable CBB habitat includes areas of grasslands and upland scrub that contain requisite habitat elements, such as small mammal burrows. CBB primarily nest in late February through late October underground in abandoned small mammal burrows but may also nest under perennial bunch grasses or thatched annual grasses, under piles of brush, in old bird nests, and in dead trees or hollow logs (Williams et al. 2014; Hatfield et al. 2015). Overwintering sites utilized by CBB mated queens include soft, disturbed soil (Goulson 2010), or under leaf litter or other debris (Williams et al. 2014). Therefore, ground disturbance and vegetation removal associated with Project activities has the potential to significantly impact local CBB populations. As a state candidate species, take of CBB without appropriate incidental take authorization from CDFW would be a violation of Fish and Game Code.

Recommended Avoidance, Minimization, and/or Mitigation Measures for CBB:

CDFW recommends a qualified biologist conduct focused surveys for CBB and potential nesting sites (small mammal burrows, perennial bunch grasses, thatched annual grasses, brush piles, old bird nests, dead trees, and hollow logs) following the methodology outlined in the Survey Considerations for California Endangered

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Species Act Candidate Bumble Bee Species (CDFW 2023) in the appropriate survey season prior to construction. Potential nesting sites, which include all 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 survey. If candidate bumble bees will be captured or handled, a 2081(a) Memorandum of Understanding with CDFW would be required. If CBB is observed in the Project site, 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 may be warranted. Take authorization would occur through issuance of an Incidental Take Permit by CDFW, pursuant to Fish and Game Code section, subdivision 2081(b).

Cumulative Impacts

The SIS/MND used an 8-step approach to analyzing cumulative impacts to biological resources. Jurisdictional wetlands and other waters, riparian habitat, special-status plant species, California tiger salamander, California red-legged frog, San Joaquin kit fox, and tricolored blackbird were addressed in the analysis. However, habitat connectivity, a natural resource addressed in Section 2.4.1 of the SIS/MND, was not considered in the Cumulative Impact Assessment. CDFW recommends that a cumulative impact assessment be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the Project, including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the Project, even if those impacts are relatively small (i.e. less than significant).

The SIS/MND very broadly discusses the installation of proposed bridges, appropriately sized culverts and under crossings, directional fencing, and removal of abandoned roadbed as avoidance and minimization measures related to habitat connectivity, but also states they will be done “where feasible”. Without these features being designed and constructed for specific species or groups of species, and a specific commitment made for a minimum amount of permeability in terms of numbers and types of connectivity opportunities, their long-term functionality cannot be analyzed, and the potential impact determined to be less than significant.

CDFW recommends that habitat connectivity be evaluated using the same detailed 8-step approach used to analyze other biological resources. CDFW also recommends the Cumulative Impact Assessment for habitat connectivity analyze the design and construction consequences from the adjacent Project currently being constructed at the SR46/SR41 “Wye” interchange, where design changes have occurred, affecting the functionality of that project’s wildlife crossing structures that were designed for multiple wildlife species, including pronghorn antelope. Caltrans should ensure that the original measures, committed to as part of the SR46 Corridor Improvement Project Final Environmental Impact Report, regarding fencing and roads around the wildlife undercrossing structures are adhered to so that the Project addressed in this letter, Antelope Grade Section, does not result in potentially unmitigable significant impacts to

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habitat connectivity or contribute to a significant cumulative impact. Fencing associated with the Project addressed in this letter, as it connects to and functions with the adjacent Wye Interchange project, should be addressed in the cumulative impacts analysis.

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 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.

If you have any questions, please contact Mindy Trask, Senior Environmental Scientist (Specialist), at the address provided on this letterhead, by telephone at (559) 939-0282, or by electronic mail at mary.trask@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Julie A. Vance
Regional Manager

ATTACHMENTS

Literature Cited
Recommended Mitigation Monitoring and Reporting Program (MMRP)

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LITERATURE CITED

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- Goulson, D. 2010. Bumblebees: behaviour, ecology, and conservation. Oxford University Press, New York. 317pp.
- Hatfield, R., S. Jepsen, R. Thorp, L. Richardson, S. Colla. 2015. *Bombus crotchii*. Crotch bubble bee. The International Union for Conservation of Nature Red List of Threatened Species. <<https://www.iucnredlist.org/species/44937582/46440211>>. Accessed 19 Sep 2023.
- Williams, P. H., R. W. Thorp, L. L. Richardson, and S.R. Colla. 2014. Bumble bees of North America: An Identification guide. Princeton University Press, Princeton, New Jersey. 208pp.
- Xerces Society for Invertebrate Conservation, Defenders of Wildlife, 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. <CESA-petition-Bombus-Oct2018.pdf (xerces.org)>. Accessed 19 Sep 2023.

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

**PROJECT: State Route 46 Corridor Improvement Project
Antelope Grade Section**

CDFW provides the following measures be incorporated into the MMRP for the Project:

RECOMMENDED MITIGATION MEASURE	STATUS/ DATE/ INITIALS
<i>As Part of Biological Studies in Support of the Initial Study</i>	
Cumulative Impact Assessment for habitat connectivity	
<i>Before Disturbing Soil or Vegetation</i>	
CBB surveys	
<i>During Construction</i>	
CBB avoidance	