



U.S. FISH AND WILDLIFE SERVICE
Palm Springs Fish and Wildlife Office
777 E. Tahquitz Canyon Way, Suite 208
Palm Springs, California 92262



CALIFORNIA DEPARTMENT OF
FISH AND WILDLIFE
Inland Deserts Region
3602 Inland Empire Blvd., Suite C-220
Ontario, California 91764

In Reply Refer to:
FWS/CDFW 23-0020565-WRIV-HCP-TA

July 29, 2025
Sent by Email

Hannah Duarte
Acting Senior Environmental Planner
California Department of Transportation, District 8
464 West 4th Street, 6th Floor
San Bernardino, California 92401

Subject: Draft Environmental Impact Report/Environmental Assessment, Interstate 215/Keller
Road New Interchange Project, State Clearinghouse No. 2022090376, California
Department of Transportation, District 8

Dear Hannah Duarte:

The U.S. Fish and Wildlife Service (Service) and the California Department of Fish and Wildlife (CDFW), hereafter referred to jointly as the Wildlife Agencies, received a Draft Environmental Impact Report/Environmental Assessment (EIR/EA) from the California Department of Transportation, District 8 (Caltrans) and the City of Murrieta (City) for the Interstate 215 (I-215)/Keller Road New Interchange Project (Project) pursuant to the National Environmental Quality Act of 1969, as amended (42 U.S.C. § 4321 *et seq.*; NEPA), the California Environmental Quality Act (CEQA), and CEQA Guidelines. The Wildlife Agencies appreciate the opportunity to review the document and provide comments and recommendations regarding Project activities that may affect public trust resources. Caltrans is the NEPA lead and a CEQA lead agency for the proposed Project. The City is the local sponsor and a CEQA Lead Agency.

WILDLIFE AGENCIES' ROLES

The primary concern and mandate of the Service is working with others to protect fish and wildlife resources and the habitats upon which they depend for the benefit of the American people. The Service has legal responsibility for the welfare of migratory birds, anadromous fish, and endangered animals and plants occurring in the United States. The Service is also responsible for administering the Federal Endangered Species Act (FESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*; FESA). CDFW is a trustee agency under the California Environmental Quality Act (CEQA) and is responsible for ensuring appropriate conservation of fish and wildlife resources including rare, threatened, and endangered plant and animal species, pursuant to the California Endangered Species Act, and administers the Natural Communities Conservation Planning Program (NCCP).

The Service issued a FESA section 10(a)(1)(B) permit to Caltrans and the City, and other permittees, for the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) on June 22, 2004, authorizing incidental take of Covered Species in approximately 700,000 acres in the Plan Area in exchange for 153,000 acres of new conservation as mitigation. CDFW also issued an NCCP Approval and Take Authorizations to Caltrans and the City for the MSHCP as per Section 2800 *et seq.*, of the California Fish and Game Code (FGC). The MSHCP established conservation programs to minimize and mitigate habitat loss and the incidental take of covered species in association with future development activities covered by Service and CDFW take permits. Caltrans and the City are MSHCP Permittees. The Keller Road interchange is an MSHCP Covered Activity.

PREVIOUS PROJECT COMMUNICATION

On November 4, 2019, the Wildlife Agencies received a MSHCP Consistency Analysis document for the Project. The Wildlife Agencies responded January 15, 2020, providing wildlife connectivity guidance and indicating that insufficient information was provided to document the Project's consistency with the MSHCP. On August 23, 2021, Caltrans provided the Project's Natural Environmental Study (NES) to the Wildlife Agencies. We provided comments to Caltrans October 21, 2021, and indicated that Warner Lane was not a Covered Activity and would result in a conservation shortfall in Cell Group Y. On September 16, 2021, the Western Riverside County Regional Conservation Authority, City of Murrieta, Caltrans, and Wildlife Agencies met to discuss the Project's NES and MSHCP implementation. On December 5, 2022, the Wildlife Agencies provided comments to Caltrans on the Project's Notice of Preparation of a Draft Environmental Impact Report.

PROJECT DESCRIPTION AND SUMMARY

The proposed Project is a new, full interchange with auxiliary lanes at I-215 and Keller Road. It is located approximately two miles north of Clinton Keith Road and one mile south of Scott Road. The Project is bounded by Zeiders Road to the west, Whitewood Road to the east, and extends one mile north and south of Keller Road along the I-215 corridor in the Cities of Murrieta and Menifee, Riverside County, California.

The EIR/EA identifies four construction alternatives: Alternative 1 – No-build Alternative; Alternative 2 – Spread Diamond Interchange; Alternative 3 – Partial Cloverleaf Interchange, and Alternative 5 – Compact Diamond. Alternative 4 – Modified Partial Cloverleaf was withdrawn from consideration and Alternative 5 is identified as the preferred alternative. The Project also includes 1) the construction of Warner Lane east of the new interchange, 2) cul-de-sac termination of Antelope Road south of Keller Road, 3) removal of the Scenic View Drive/Keller Road intersection, 4) a new paved connection, south of Keller Road to the proposed Warner Lane, and 5) non-motorized and pedestrian access improvements. A comprehensive Project description may be found in Chapter 1 of the EIR/EA. All three of the proposed build alternatives include the construction of a new road in Criteria Cell 5256 and extend into MSHCP Proposed Constrained Linkage (PCL) 16 in their southern extent.

East of I-215 and south of Keller Road, the Project overlaps MCHCP Cell Group Y, consisting of Criteria Cells 5255, 5256, 5358 and 5361 and PCL 16. The MSHCP characterizes PCL 16 as “...an unnamed blueline drainage connecting Proposed Linkage 8 in the west with Proposed Core 2 (Antelope Valley) in the east. The Linkage provides Habitat for species and provides for movement of species. The Linkage likely provides for movement of common mammals such as bobcat. Existing urban Development and agricultural use constrain the Linkage along its entire length, and the Linkage is surrounded by a city-designated planned land use. Species movement through the Linkage may also be affected by the intersection of the Linkage with I-215. Therefore, treatment and management of edge conditions along this Linkage will be necessary to ensure that it provides Habitat and movement functions for species using the Linkage” (MSHCP Section 3.2.3). MSHCP planning species identified for Proposed Constrained Linkage 16 include Quino checkerspot butterfly, coastal California gnatcatcher, and bobcat.

COMMENTS AND RECOMMENDATIONS

Based on the information presented within the EIR/EA and supporting materials made available for review, the Wildlife Agencies offer the following comments and recommendations to assist Caltrans and the City in adequately identifying, avoiding, and/or mitigating the Project’s significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources. CDFW recommends the measures or revisions below be included in a science-based monitoring program that contains adaptive management strategies as part of the Project’s CEQA mitigation, monitoring, and reporting program (Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15097).

Western Riverside County Multiple Species Habitat Conservation Plan

Compliance with approved habitat plans, such as the MSHCP, is cited in CEQA. Specifically, Section 15125(d) of the CEQA Guidelines, which requires CEQA documents discuss any inconsistencies between a proposed Project and applicable general plans and regional plans, including habitat conservation plans and natural community conservation plans. An assessment of the impacts to the MSHCP as a result of this Project is necessary to address CEQA requirements.

The proposed Project occurs within the MSHCP Plan Area and is subject to the provisions and policies of the MSHCP. Permittees need to ensure that covered activities are carried out in compliance with the MSHCP policies and procedures and associated Implementing Agreement. To demonstrate consistency with the MSHCP, as part of the CEQA review, Caltrans should ensure the Project contributes to the MSHCP’s Local Development Mitigation Fees and other relevant fees as set forth in MSHCP Section 8.5; and demonstrates compliance with the policies for the: 1) Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools (MSHCP Section 6.1.2); 2) Protection of Narrow Endemic Plant Species (MSHCP Section 6.1.3); 3) Urban/Wildlands Interface Guidelines as set forth in MSHCP Section 6.1.4; 4) Additional Survey Needs and Procedures, specifically the policies set forth for burrowing owl (*Athene cunicularia*) (MSHCP Section 6.3.2); 5) Planned Roads within the Criteria Area MSHCP Section 7.3.5, MSHCP Section 7.5 including Guidelines for the Siting of Planned Roads

within the Criteria Area and Public/Quasi-Public Land (MSHCP Section 7.5.1), and Guidelines for Construction of Wildlife Crossings (MSHCP 7.5.2); and 6) compliance with the Best Management Practices and the siting, construction, design, operation and maintenance guidelines as set forth in Section 7.0 and Appendix C of the MSHCP.

Specific Comments

Comment #1: MSHCP Amendment and Criteria Refinement following Planned Roads Within Criteria Area (MSHCP Section 7.3.5) and Section 7.5 including Guidelines for the Siting of Planned Roads within the Criteria Area and Public/Quasi-Public Land (MSHCP Section 7.5.1)

As proposed, the three build alternatives identified in the EIR/EA are inconsistent with MSHCP Section 7.5.3 Planned Roads Within the Criteria Area. Warner Lane is not a planned road in the Criteria Area, as such it is not depicted on MSHCP Figure 7-1 – General Plan Circulation Element with Criteria Area (MSHCP Section 7.3.5). Additionally, the addition of Warner Lane, proposed within the central and northern portion of Criteria Cell 5256 in Cell Group Y, conflicts with that Cell's described mitigation conservation requirements. To address the inclusion of Warner Lane, the City will need to seek an MSHCP Amendment (MSHCP Section 6.10) and complete the Criteria Refinement Process (MSHCP Section 6.5 and 6.3.1) to address the discrepancy between the proposed Project and the Cell Group Y described mitigation conservation requirements.

The EIR/EA includes mitigation measures BIO-7 which calls for a Minor Amendment to the MSHCP to include Warner Lane as a covered activity prior to approval of the final environmental document. While we appreciate the recognition that Warner Lane needs to be addressed as a covered activity in the Criteria Area and that a future Minor Amendment is identified, please note that MSHCP Section 6.10.2 lists conditions for Minor Amendments, and changes that cannot meet those conditions may require a Major Amendment. We are also concerned that there is no discussion of the need for a commitment to a Criteria Refinement to address reserve assembly in Cell Group Y. The Wildlife Agencies recognize that it is theoretically possible that a particularly strategic Amendment could eliminate the need for a Criteria Refinement however that cannot be determined until after the proposed Amendment has been identified. We therefore request that the proposed Amendment to accommodate Warner Lane be described in a recirculated EIR/EA with either a Criteria Refinement that addresses the reserve assembly mitigation described in Cell Group Y or an analysis which explains how the proposed Amendment makes a Criteria Refinement unnecessary by supporting the reserve assembly mitigation in the subunit.

Both the MSHCP Amendment and Criteria Refinement Process are needed before the Wildlife Agencies can evaluate a Determination of Biologically Equivalent or Superior Preservation (DBESP) or an MSHCP consistency analysis for the proposed Project. The EIR/EA should not be adopted until the Project has completed MSHCP implementation and demonstrated consistency with the MSHCP. Thus, the Wildlife Agencies request that the City and Caltrans

remove BIO-7 and recirculate the EIR with the planned Amendment and Criteria Refinement analysis.

Comment #2: Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools (Section 6.1.2) and Protection of Narrow Endemic Plant Species (Section 6.1.3)

The procedures described in the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools (MSHCP Section 6.1.2) and Protection of Narrow Endemic Plant Species (MSHCP Section 6.1.3) ensure the biological functions and values of these resources are maintained throughout the MSHCP Plan Area, including all areas located outside Criteria Areas. Additionally, these MSHCP procedures help identify priority conservation areas and protect ecological functions that may affect downstream resources within the MSHCP Conservation Area. The assessment of riparian/riverine and vernal pool resources may be completed as part of the CEQA review process as set forth in Article V of the State CEQA Guidelines. As required by the MSHCP, its associated Implementation Agreement, and the Permittee's associated take permits issued by the Service and CDFW, completion of the DBESP process must occur prior to adoption of the environmental document to ensure the Project is consistent with the MSHCP, and provides public disclosure and transparency during the CEQA process by identifying Project impacts and mitigation for wetland habitats and species, per CEQA Guidelines, §§ 15071, subds.(a)-(e).

The Wildlife Agencies appreciate the impact analysis provided within the EIR/EA and inclusion of measure BIO-8 acknowledging the need to provide the Wildlife Agencies a DBESP for review. However, as stated above, we remind the City and Caltrans that the final EIR/EA should not be adopted until the proposed Project has demonstrated consistency with the MSHCP, including submittal of a DBESP with an Equivalency Analysis demonstrating how Project-related impacts to MSHCP covered resources will be offset in a manner biologically equivalent or superior to an avoidance alternative. Following the appropriate process and timeline under the MSHCP would make inclusion of BIO-8 and BIO-12 unnecessary, as these tasks would already be completed, and the EIR/EA could simply refer to the approved documents. However, if Caltrans chooses to forego proper implementation of the MSHCP (i.e., completion prior to the certification of the EIR/EA), as discussed above, BIO-8 and BIO-21 should be amended in the EIR/EA as follows (new language identified in **bold** and deleted text in strikethrough):

BIO-8: Compensation for ~~Riparian/Riverine Habitat and Special-status Vegetation Communities~~ **MSHCP Resources**. Before initiating construction activities Caltrans would submit an **MSHCP Consistency Analysis**, Determination of Biologically Equivalent or Superior Preservation (DBESP), **and a request for Streamlined Biological Opinion** to the **Wildlife Agencies** for review ~~regarding to address impacts on to MSHCP Resources riparian/riverine habitat~~. This submission is in compliance with the Western Riverside County Multiple Species Habitat Conservation Plan, Section 6.1.2, **and Section 6.1.3** ~~Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools~~ (County of Riverside 2003). The DBESP would ensure replacement of any lost functions and values of riparian/riverine habitat as it relates to riparian species. Mitigation would include BMPs as determined by final

site design to avoid and minimize downstream impacts on conserved resources from changes in drainage or water quality. Mitigation for permanent loss of functions or values would be compensated at a **no less than 2:1** ratio or as otherwise determined in coordination with the ~~resource~~ **Wildlife Agencies**. Mitigation would be through contribution to a mitigation bank approved by **the Wildlife Agencies CDFW, permittee responsible mitigation, or other Wildlife Agencies approved mitigation option** ~~through payment to an approved in-lieu fee program.~~

BIO-21: Compensation for Least Bell's Vireo Habitat. Before initiating construction activities, Caltrans will submit a DBESP to the **Wildlife Agencies** for impacts on riparian/riverine habitat in compliance with MSHCP Section 6.1.2, Protection of Species Associated with Riparian/Riverine areas and Vernal Pools. The DBESP will ensure replacement of any lost functions and values of riparian/riverine habitat, including least Bell's vireo habitat **following Species Objectives**. Mitigation will include best management practices as determined by final site design to avoid and minimize downstream impacts on conserved resources from change in drainage or water quality. Mitigation for permanent loss of functions or values will be compensated at a **not less than 2:1** ratio or as otherwise determined in coordination with the ~~resource~~ **Wildlife Agencies**. Mitigation will be through **permittee responsible mitigation, contribution to a mitigation bank approved by CDFW¹ or other Wildlife Agencies approved mitigation option** ~~through payment to an approved in-lieu fee program.~~

For clarification purposes and to demonstrate compliance with the MSHCP, the Wildlife Agencies request Caltrans amend BIO-18 in the EIR/EA as follows (new language identified in **bold** and deleted text in strikethrough):

BIO-18: Avoidance of Least Bell's Vireo Nests. Prior to ground disturbance, focused surveys for least Bell's vireo will be conducted following the most recent Service survey protocols during the appropriate season (April 10 through July 31). Any occupied habitat will be avoided to the maximum extent practicable. Potential impacts on occupied habitat will be described in the DBESP prepared for the proposed Project **and mitigated**. All vegetation removal and ground-disturbing activities will be planned outside the least Bell's vireo breeding season (April 10 through July 31 **March 15 – September 15**), if practicable. If vegetation removal would occur during those time periods, a preconstruction survey for active nests will be conducted by a qualified biologist no more than 3 days before the onset of ground disturbing activities within **300 feet of** the impact area and a 300-foot buffer. If active nests are **present** found on the site, **a 300-foot no-work buffer** disturbance or removal of the nest will be **implemented** avoided until the young have fledged and the nest is no longer active as determined by a qualified biologist. The qualified biologist will establish a no-activity buffer around the nest and will periodically monitor construction activities to confirm the nest is not being harmed or harassed by construction activities. A qualified biological monitor will be present during all **initial** vegetation removal and **all** ground-

¹ The Wildlife Agencies are not aware of any mitigation bank that has credits for least Bell's vireo.

disturbing activities that occur within the least Bell's vireo breeding season and **the biological monitor** will have the authority to halt construction if construction activities would harm a nest.

Comment #3: Urban/Wildlands Interface Guidelines (MSHCP Section 6.1.4) and Guidelines for Construction of Wildlife Crossings (MSHCP Section 7.5.2)

As part of assembling the MSHCP Conservation Area, boundaries are established between development and MSHCP Conservation Areas. Development adjacent to an MSHCP Conservation Area may result in edge effects that adversely affect biological resources within the MSHCP Conservation Area. To address edge effects and maintain conservation values within the Conservation Areas, Permittees are required to implement the Urban/Wildlands Interface Guidelines (MSHCP Section 6.1.4) to minimize harmful effects from drainage, toxics, lighting, noise, invasives, barriers, and grading/land development.

The Wildlife Agencies recommend that the EIR/EA incorporate avoidance and minimization measures with a comprehensive conservation strategy to ensure effective outcomes, rather than solely identifying preliminary features subject to further modification during the design phase. Furthermore, as artificial light sources do not exist in the area subject to Project disturbance, the Wildlife Agencies have identified an additional avoidance and minimization measure, identified as NEW-BIO-24, to ensure all permanent lighting features installed as part of the proposed interchange incorporate wildlife-friendly lighting designs.

For clarification purposes and to demonstrate compliance with the MSHCP, the Wildlife Agencies requests Caltrans and the City amend BIO-4, BIO-6, NEW-BIO-22, and NEW-BIO-24 in the EIR/EA as follows (new language identified in **bold** and deleted text in ~~strikethrough~~).

- BIO-4: Wildlife Fencing Plan. **A Barrier and Fencing Plan (Plan) will be submitted to the Wildlife Agencies for review and approval a minimum of 60-days prior to construction. The Plan would include information such as details to prevent and minimize unauthorized public access, domestic animal predation, illegal trespass, and dumping in the MSHCP Conservation Area (such as block walls along areas directly adjacent to potential conservation areas).** The proposed Project will install ~~directional exclusion~~ **exclusion** fencing for 300 feet along the western side of Antelope Road and approximately 50 feet **north and south on the northern and southern sides** of PCL 16 on the western side of the SB merge lane per the proposed Project plans. The 8-foot-high fence would be buried to avoid dig outs from wildlife, and ~~the material would be made of constructed of chain-link fencing. One-quarter inch 1/4-inch~~ **mesh hardware cloth will be attached to the fence and extend a minimum of one foot below, and two feet above the ground.**
- BIO-6: **Landscaping Plan** Vegetative Cover at Culvert. **A Landscaping plan will be provided to the Wildlife Agencies for review and approval prior to construction. The Landscaping plan will address items such as** ~~The proposed Project will install~~ **planting of** native vegetation, indicative of surrounding habitat, **identification of**

success criteria for establishment, and avoid utilizing invasive plant species as identified in Table 6-2 of the MSHCP at the western entrance of the 60-inch culvert and 48-inch culvert located within PCL 16.

NEW-BIO-22 Wildlife Entrapment Prevention. All proposed design features, including stormwater infrastructure, shall be developed to prevent the entrapment of wildlife.

NEW-BIO-24 Wildlife-Friendly Lighting. Installation of permanent light sources will utilize wildlife-friendly lighting. Wildlife-friendly lighting consists of a shielded light source and contains LEDs, or emissive features emitting light at a correlated color temperature ranging from 700 to 2000 degrees kelvin. Luminaire shielding should result in zero backlight and uplift. From bottom center, limit front- and side-light glare from direct emission sources to a 60-degree angle or less (i.e., Zone FL/FM), as defined under the Backlight, Uplight and Glare (BUG) classification system established by the Illuminating Engineering Society (IES 2011)². Incorporation of these elements will minimize the direct and indirect effects to wildlife between dusk and dawn.

Comment #4: Burrowing Owl, Additional Survey Needs and Procedures (MSHCP Section 6.3.2)

Project activities may result in injury or mortality to burrowing owls (*Athene cunicularia*), a candidate species under the California Endangered Species Act (Fish & G. Code, § 2050 *et seq.*). Associated actions may also disrupt breeding behavior, and affect breeding, wintering, and foraging habitat for the species. Habitat loss may result in local extirpation of the species and contribute to local, regional, and statewide declines of the species.

The EIR/EA identifies the Project site contains suitable burrowing owl habitat. Although focused burrowing owl surveys were performed in 2015, due to the length of time that has lapsed, updated burrowing owl surveys are recommended to avoid Project delays. The focused surveys should be performed per the *2006 Burrowing Owl Survey Instruction for the Western Riverside Multiple Species Habitat Conservation Plan Area*, which specify focused surveys should be conducted during the breeding season March 1 – August 31 to describe if, when, and how burrowing owls use the site.

The Wildlife Agencies request Caltrans and the City amend BIO-20 in the EIR/EA as follows (new language identified in **bold** and deleted text in ~~striketrough~~).

BIO-20: ~~Avoidance of Burrowing Owl Active Burrows Survey and Avoidance Plan.~~ Due to the presence of suitable burrowing owl habitat, four focused surveys shall be conducted within 500-feet of suitable habitat subject to disturbance during the burrowing owl breeding season (March 1 through August 31) in accordance with

² [IES] Illuminating Engineering Society of North America. 2011. Luminaire Classification Systems for Outdoor Luminaires Technical Memoranda (TM) 15-11 & Addendum A

the Western Riverside MSHCP Burrowing Owl Survey Instructions (RCA, 2006)^{Error! Bookmark not defined.} **. If survey results are negative (i.e., no occupied burrows or live burrowing owls are detected) and ground-disturbing Project activities are scheduled to begin within 30 days of the final survey, then no additional preconstruction survey or biological monitoring requirements will be necessary.** Before initiation of construction activities, a burrowing owl preconstruction survey will be conducted in accordance with the burrowing owl survey instructions for the Western Riverside Multiple Species Habitat Conservation Plan area (RCA 2006). In accordance with these instructions, this survey will occur within 30 days before ground-disturbing activities **(including vegetation, clearing, clearing, and grubbing, tree removal, site watering, equipment, staging, grading, etc.).** A minimum of one survey site visit within the described time frame before disturbance is required to confirm presence or absence of owls on the site. Preconstruction surveys will be conducted by a qualified biologist. If surveys confirm that occupied burrowing owl habitat is located within the proposed Project impact area or within 500 feet of the impact area, ~~avoidance measures will be implemented consistent with the requirements of the MSHCP~~ **Caltrans or the City will immediately inform the Regional Conservation Authority (RCA) and the Wildlife Agencies of the observation. An experienced biologist will need to verify if any burrowing owls within the Project site are breeding or wintering and prepare a Burrowing Owl Protection and Relocation Plan detailing avoidance or relocation methods. The Burrowing Owl Protection and Relocation Plan will be submitted to the Wildlife Agencies for review and approval prior to initiating Project ground disturbance.**

Following initial ground-disturbing activities, if the Project site is left undisturbed for 30 days or more, prior to recommencement of Project activities, a pre-construction survey will again be necessary to ensure burrowing owls have not colonized the site. If burrowing owls are observed, the coordination as described above will be necessary.

Comment #5 Nesting Birds

The Project may have a significant impact on nesting birds, including Species of Special Concern and fully protected species, which are subject to Fish and Game Code section 3503, 3503.5, 3513 and the Migratory Bird Treaty Act of 1918, as a result of direct and indirect impacts that may result in the loss of nesting and/or foraging habitat for passerine and raptor species.

As CDFW staff have observed the nesting bird season occurring earlier and later than historical nesting season dates it is recommended to perform nesting bird surveys regardless of time of year to ensure compliance with all applicable laws pertaining to nesting and to avoid take of nests.

As the duration of nest building and egg incubation varies between avian species, CDFW recommends surveying for nesting behavior, nests, or nest construction three days prior to start

of Project construction to ensure all potential nests on site are identified and to avoid take of nests. Project activities such as grading and grubbing may result in habitat destruction, causing the death or injury of adults, juveniles, eggs, or hatchlings. In addition, the Project may remove habitat by eliminating native vegetation that supports essential foraging and breeding habitat.

It is the Lead Agencies' responsibility to avoid Take of all nesting birds. 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 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.)*". 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*". These regulations apply anytime nests or eggs exist on the Project site.

To avoid take of nesting birds, CDFW requests Caltrans and the City amend BIO-15, BIO-16, and BIO-17 in the EIR/EA. Please note that the MSHCP/NCCP permits require removal of occupied gnatcatcher habitat outside of the nesting season. The request modifications are as follows (new language identified in **bold** and deleted text in ~~striketrough~~):

BIO-15: Avoidance of Raptor Nests. All vegetation removal and ground disturbing activities will be planned outside the peak nesting season for birds (~~February~~ **January** 1 through September 30), if practicable. ~~If Prior to vegetation removal~~ **regardless of time of year would occur during those time periods**, a preconstruction survey for active nests will be conducted by a qualified biologist no more than 3 days before the onset of ground-disturbing activities within the impact area and a 500-foot buffer. If active nests are **present found on the site**, disturbance or removal of the nest will be avoided until the young have fledged and the nest is no longer active as determined by a qualified biologist. A **500-foot no-work disturbance** buffer will be established as required and determined by the qualified biologist. The distance of the buffer will depend on the species, site conditions, and the proposed construction activities near the active nest. The qualified biologist will monitor active nests to confirm construction activities are not resulting in harm to or harassment of the nest. The qualified biological monitor will coordinate with the Resident Engineer to halt construction if construction activities would harm a nest.

BIO-16: Avoidance of Non-listed Special-status Birds. All vegetation removal and ground-disturbing activities will be planned outside the peak nesting season for birds (February 1 through September 30) if practicable. ~~If Prior to vegetation removal~~ **regardless of time of year would occur during those time periods**, a preconstruction survey for active nests will be conducted by a qualified biologist no more than 3 days before the onset of ground-disturbing activities within **300 feet of the proposed Project impact area and a 300-foot buffer**. If active nests are **present found on the site**, a **300-**

foot no-work buffer will be established ~~disturbance or removal of the nest will be avoided~~ until the young have fledged and the nest is no longer active as determined by a qualified biologist. The qualified biologist will ~~establish a no-activity buffer around the nest and~~ will periodically monitor construction activities to confirm the nest is not being harmed or harassed by construction activities. The qualified biological monitor will have the authority to halt construction if construction activities would harm a nest.

BIO-17 Avoidance of Coastal California Gnatcatcher Nests. All **coastal sage scrub** vegetation removal and ground-disturbing activities will be ~~planned~~ **conducted** outside the coastal California gnatcatcher breeding season (February 15 through August 30), ~~if practicable~~ **unless the habitat has been surveyed and is not occupied by coastal California gnatcatcher**. ~~If vegetation removal would occur during those time periods, a preconstruction survey for active nests will be conducted by a qualified biologist no more than 3 days before the onset of ground disturbing activities within the impact area and a 500-foot buffer. If active nests are found on the site, disturbance or removal of the nest will be avoided until the young have fledged and the nest is no longer active as determined by a qualified biologist. The qualified biologist will establish a no-activity buffer around the nest and will periodically monitor construction activities to confirm the nest is not being harmed or harassed by construction activities. A qualified biological monitor will be present during all vegetation removal and ground-disturbing activities that occur within the coastal California gnatcatcher breeding season and will have the authority to halt construction if construction activities would harm a nest.~~

Comment #6: Crotch's bumble bee (Bombus crotchii)

The California Fish and Game Commission accepted a petition to list Crotch's bumble bee as endangered under CESA, determining the listing "may be warranted" and advancing the species to the candidacy stage of the CESA listing process. Crotch's bumble bee has a State ranking of S1/S2, is listed as an invertebrate of conservation priority under the Terrestrial and Vernal Pool Invertebrates of Conservation Priority (CDFW 2017)³, and is granted full protection of a threatened species under CESA. Take of any endangered, threatened, or candidate species resulting from Project actions is prohibited, except as authorized by State law (Fish & G. Code, §§ 86, 2062, 2067, 2068, 2080, 2085; Cal. Code Regs., tit. 14, § 786.9). Crotch's bumble bee is not a covered species under the MSHCP.

As identified on page 289 of the EIR/EA, coastal sage scrub and areas of grasslands occur throughout the Project area, which correspond to suitable habitat for Crotch's bumble bee. The EIR/EA provides no assessment of Project-related impacts on Crotch's bumble bee. As Project activities may result in permanent or temporary loss of suitable nesting or foraging habitat, may result in death or injury to adults, eggs, and larva; result in burrow collapse, nest abandonment, and contribute to reduced nest success if Crotch's bumble bee is present, surveys should be conducted when the species is most likely to be detected above ground, between March 1 to

³ California Department of Fish and Wildlife. 2017. California Terrestrial and Vernal Pool Invertebrates of Conservation Priority. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=148248&inline>

September 1. Surveys should be conducted within the Project site and adjacent areas where suitable habitat exists. If Crotch's bumble bee is present, an Incidental Take Permit from the CDFW pursuant to Fish and Game Code section 2081 subdivision (b), and/or mitigation may be needed. CDFW request that Crotch's bumble bee be addressed in the EIR/EA as described above and the EIR/EA be recirculated with survey results, avoidance measures, and mitigation as needed.

Additional Recommendations

- The proposed Project may be subject to requirements set forth by the State Water Resources Control Board (SWRCB) and/or the Regional Water Quality Control Board (RWQCB). Both the SWRCB and RWQCB are responsible for establishing the water quality standards (objectives and beneficial uses) required by the Clean Water Act and regulating discharges to ensure compliance with the water quality standards. Recent design features to comply with discharge requirements may conflict with wildlife connectivity considerations. The Wildlife Agencies recommend that all proposed design features, including stormwater infrastructure, be developed to prevent the entrapment of wildlife and ensure the connectivity function of PCL 16 is preserved.
- BIO-5 Noise and Light Reduction Barrier. In coordination with Caltrans, the Wildlife Agencies reviewed and approved the design of the proposed barrier to be installed adjacent to the outside shoulder of the southbound I-215 on-ramp. As a significant amount of time has lapsed since the initial coordination, we request Caltrans provide the most recent barrier design plans to the Wildlife Agencies to review.

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 (CNDDB). The CNDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDB/Submitting-Data>. The types of information reported to CNDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDB/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

The Wildlife Agencies appreciate the opportunity to review and comment on the Draft EIR/EA prepared for the I-215/Keller Road New Interchange Project. As stated above we request that the Amendment for Warner Lane, a Criteria Refinement for Cell Group Y and an analysis of impacts to Crotch's bumble bee be included in the EIR/EA and that the EIR be recirculated. We also that the recommended changes to the BIO mitigation measures be include in the recirculated EIR/EA. Wildlife Agencies personnel are available for technical assistance regarding MSHCP implementation, biological resources, and strategies to minimize Project impacts.

If you have any questions or comments regarding this letter please contact [John M. Taylor](#)⁴ of the Service, [Alisha Curtis](#)⁵ of CDFW, or [Gabriella Tolley](#)⁶ of CDFW.

Sincerely,



Digitally signed by
BRIAN CROFT
Date: 2025.07.29
14:34:14 -07'00'

Brian Croft
Field Supervisor
U.S. Fish and Wildlife Service

DocuSigned by:

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Kimberly Freeburn
Environmental Program Manager
California Department of Fish and Wildlife

ec:

Aaron Gabbe, Western Riverside County Regional Conservation Authority, (agabbe@rctc.org)
Office of Planning and Research, State Clearinghouse, Sacramento, state.clearinghouse@lci.ca.gov
Eric Becker, San Diego Regional Water Quality Control Board, eric.becker@waterboards.ca.gov

⁴ john_m_taylor@fws.gov

⁵ Alisha.Curtis@wildlife.ca.gov

⁶ Gabriella.Tolley@wildlife.ca.gov