



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
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GAVIN NEWSOM, Governor
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October 27, 2025

Matt Fowler
Senior Environmental Planner, District 5
California Department of Transportation
50 Higuera Street
San Luis Obispo, California 93401

Subject: San Benito U. S. Route 101 Pavement Rehabilitation Project
EA 05-1J840 (Project)
Initial Study with Proposed Mitigated Negative Declaration (MND)
SCH No.: 2025091293

Dear Matt Fowler:

The California Department of Fish and Wildlife (CDFW) received an MND prepared by the California Department of Transportation (Caltrans), as lead agency, for the above-referenced 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 resources. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under 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

¹ CEQA is codified in the California Public Resources Code, 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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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 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.

In these roles, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (i.e., 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.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include sections 3503 (regarding unlawful take, possession, or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession, or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

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

PROJECT DESCRIPTION SUMMARY

Proponent: Caltrans

Objective: Caltrans proposes to rehabilitate a 7.55-mile section of U. S. 101 in San Benito County (Project). The Project proposes to rehabilitate approximately 30 lane miles of existing pavement, improve 28 culverts at 12 locations, upgrade traffic safety systems, improve Traffic Management Systems, and improve wildlife connectivity within the Project corridor.

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Location: The Project is in San Benito County on U. S. Route 101 between post miles 0.0 and 7.55, from just southwest of the San Juan Road overcrossing (Monterey-San Benito County line) to a location northeast of the Betabel and Y Road overcrossing (San Benito-Santa Clara County line).

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist Caltrans in adequately identifying the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. A Recommended Mitigation Monitoring and Reporting Program is attached (Attachment 1).

CDFW is concerned regarding potential Project related impacts to fish and wildlife connectivity and the following special-status species: the State candidate western burrowing owl (*Athene cunicularia hypugaea*), and species of special concern Monterey hitch (*Lavinia exilicauda harengus*) and central California coast roach (*Hesperoleucus symmetricus symmetricus*).

Western Burrowing Owl (BUOW)

The California Fish and Game Commission approved western burrowing owl (BUOW) as a candidate for potential listing as a protected species under CESA on October 10, 2024, and published these findings in the California Regulatory Notice Register (Notice Register) on October 25, 2024. As such, BUOW is now a candidate under CESA and receives the same legal protection afforded to an endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085). The protected status is for the species, whether nesting or overwintering.

The Project area lies in the transition between year-long and wintering habitat (CDFW and CIWTG 2025). As identified in the MND, BUOW nesting and wintering records are found in the Project vicinity and BUOW may occupy a variety of habitat types including highly urban settings. The MND discounts the potential presence of BUOW in the Project area due to lack of observations during non-focus surveys and presence of higher quality habitat nearby, CDFW does not concur.

As there is a possibility that BUOW could be impacted by Project activities, CDFW recommends the following:

Recommended Mitigation Measure 1: BUOW Surveys

Prior to construction, CDFW recommends assessing presence/absence of BUOW on the Project site, as well as a 500-meter buffer surrounding the Project site, by having a qualified biologist conduct surveys following the 2012 Staff Report on Burrowing Owl Mitigation (2012 Staff Report; CDFG 2012).

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Recommended Mitigation Measure 2: BUOW Avoidance Buffer

Should a BUOW or known BUOW den (active or inactive) be discovered during pre-construction surveys or during construction, CDFW recommends implementing the no-disturbance buffers outlined in the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012), prior to and during any ground-disturbing activities. CDFW also recommends that these buffers be implemented for both wintering and breeding BUOW.

Recommended Mitigation Measure 3: BUOW Take Authorization

If a BUOW or known BUOW den (active or inactive) is detected, and the no-disturbance buffers outlined in the 2012 Staff Report on Burrowing Mitigation are not feasible, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b), is necessary to comply with CESA.

Monterey Hitch and Southern Coastal Roach (resident fish)

The MND indicates that there is no suitable habitat for Monterey hitch and southern coastal roach in the Project area, CDFW does not concur with this determination. There is suitable habitat in one or more of the streams in the Project area. These resident fish species are adapted to streams with intermittent hydrology, low oxygen, and high temperatures and can persist in isolated pools for extended periods of time and move during seasonal flow events (Moyle et al. 2015). The culverts at postmiles 0.42, 4.4, 6.4 and potentially others in the Project area appear to convey intermittent streams that may support resident fish, and the culverts may provide passage between necessary habitat features in some seasons. There may also be pool habitat features in the Project area that could serve as refuge during seasonally dry periods.

Recommended Mitigation Measure 4: Special Status Resident Fish

CDFW recommends that a qualified biologist evaluate stream habitats in the Project area to determine if they could support passage or refugia for resident fish under various flow conditions. In streams that may provide habitat for resident fish, CDFW recommends that Caltrans design drainage systems that do not hinder passage or refuge for resident fish, including associated end treatments (e.g., rock slope protection, aprons).

Editorial Comments and/or Suggestions

Nesting Birds: CDFW encourages that project implementation occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February 1 through September 15), the Project applicant is responsible for ensuring that implementation of the Project does not result

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in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

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

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

Wildlife Movement and Habitat Connectivity: CDFW supports the wildlife crossing improvements proposed for this Project to offset impacts that the existing highway currently imposes on landscape-scale habitat connectivity, meeting the intent in California Assembly Bill 2344 (“Safe Roads”). Because the analysis in the MND is focused on landscape-scale connectivity for large animals, CDFW recommends that Caltrans includes an evaluation of habitat connectivity for other terrestrial and aquatic species in the MND, such as locally present rare species including resident fish (e.g., Monterey hitch), amphibians (e.g., California tiger salamander), reptiles (e.g., western pond turtle), and mesocarnivores (e.g., American badger). CDFW requests that Caltrans consider additional passage improvement opportunities in the Project area that may benefit a variety of terrestrial and aquatic wildlife. CDFW recommends that Caltrans coordinate with CDFW’s Region 4 staff on the wildlife crossing and fencing design plans as they are being developed. CDFW also recommends that Caltrans develop and implement a long-term management program to monitor the effectiveness

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of the structures for at least five years after construction (e.g., Federal Highway Administration 2011; Hardy et al. 2003) and for the long-term maintenance of the integrity of the wildlife crossing structures.

Lake and Streambed Alteration: The MND states the Project could disturb the bed or bank of streams and permits are required. CDFW concurs, as Project activities that will substantially change or use any material from the bed, bank, and channel of any river, stream, or lake are subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); (c) deposit or dispose of debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial and may include those that are highly modified such as canals and retention basins.

CDFW is required to comply with CEQA prior to issuance of a Lake or Streambed Alteration Agreement; therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts to lakes or streams, a subsequent CEQA analysis may be necessary for Lake or Streambed Alteration Agreement issuance. For information on notification requirements, please refer to CDFW's website (<https://wildlife.ca.gov/Conservation/LSA>) or contact CDFW Central Region Caltrans liaison staff.

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

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

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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>.

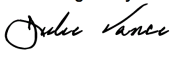
ENVIRONMENTAL DOCUMENT FILING FEES

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 Project to assist Caltrans in identifying and mitigating Project impacts on biological resources. A Mitigation Monitoring and Report Program (Attachment 1) is included to assist Caltrans with incorporating the recommended mitigation measures provided above. 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:

FA83F09FE08945A...

Julie A. Vance
Regional Manager

Attachment 1: Recommended Mitigation Monitoring and Reporting Program (MMRP)

cc: State Clearinghouse
Land Use and Climate Innovation
state.clearinghouse@lci.ca.gov

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REFERENCES

- California Burrowing Owl Consortium (CBOC). 1993. Burrowing owl survey protocol and mitigation guidelines. April 1993.
- California Department of Fish and Game (CDFG). 2012. Staff Report on burrowing owl mitigation. California Department of Fish and Game. March 7, 2012.
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- Federal Highway Administration. 2011. Wildlife Crossing Structure Handbook, Design and Evaluation in North America. Central Federal Lands Highway Division, Lakewood, Colorado. Publication No. FHWA-CFL/TD-11-003.
- Hardy, A., Clevenger, A. P, Huijser, M., & Neale, G. 2003. An overview of methods and approaches for evaluating the effectiveness of wildlife crossing structures: emphasizing the science in applied science. UC Davis: Road Ecology Center.
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CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)

**PROJECT: San Benito U. S. Route 101 Pavement
Rehabilitation Project EA 05-1J840**

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

RECOMMENDED MITIGATION MEASURE	STATUS/ DATE/ INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Recommended Mitigation Measure 4: Resident fish habitat assessment	
Recommended Mitigation Measure 1: Western burrowing owl surveys	
Recommended Mitigation Measure 3: Western burrowing owl take avoidance	
<i>During Construction</i>	
Recommended Mitigation Measure 2: Western burrowing owl avoidance buffer	