

## **Morning Drive 3R Rehabilitation**

On State Route 184 in and near the City of Bakersfield from  
0.1 mile north of Edison Highway to 0.1 mile north of Chase Avenue

06-KER-184-PM 8.5/11.6

EA/Project ID: 06-0U430/0616000033

SCH Number: 2020059032

### **Initial Study with Negative Declaration**



Prepared by the  
State of California Department of Transportation

**October 2020**



## General Information About This Document

The following appendices have been added to the document since the draft environmental document was circulated for public review and comment:

- **Appendix B** Comment Letters and Responses
- **Appendix C** U.S. Fish and Wildlife Service Species List, California Native Plant Society Species List, California Natural Diversity Database Query
- **Appendix D** U.S. Fish and Wildlife Service Letter of Concurrence

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SCH Number: 2020059032  
06-KER-184-PM 8.5/11.6  
06-0U430/0616000033

Rehabilitation of deteriorated pavement and sidewalks  
on State Route 184 from post miles 8.5 to 11.6 in Kern County

**INITIAL STUDY with Negative Declaration**

Submitted Pursuant to: (State) Division 13, California Public Resources Code

THE STATE OF CALIFORNIA  
Department of Transportation



Juergen Vespermann  
Office Chief (Acting)  
Southern San Joaquin Valley Environmental Office  
California Department of Transportation

09-09-2020

Date



## **Negative Declaration**

Pursuant to: Division 13, Public Resources Code

### ***Project Description***

The California Department of Transportation (Caltrans) proposes to rehabilitate and bring to current standards the existing roadway on State Route 184 in Kern County between 0.1 mile north of Edison Highway at post mile 8.5 and 0.1 mile north of Chase Avenue at post mile 11.6. Complete Streets elements would be incorporated, including Americans with Disabilities Act-compliant sidewalks, curb ramps, and continuous bike lanes in both directions, within the project limits.

### ***Determination***

Caltrans has prepared an Initial Study for this project and, following public review, has determined from this study that the project would not have a significant effect on the environment for the following reasons.

The project would have no effect on: Agriculture and Forest Resources, Air Quality, Cultural Resources, Energy, Geology and Soils, Land Use and Planning, Mineral Resources, Population and Housing, Recreation, Transportation, Tribal Cultural Resources, Wildfire.

The project would have no significant effect on: Aesthetics, Biological Resources, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology and Water Quality, Noise, Public Services, and Utilities and Service Systems.



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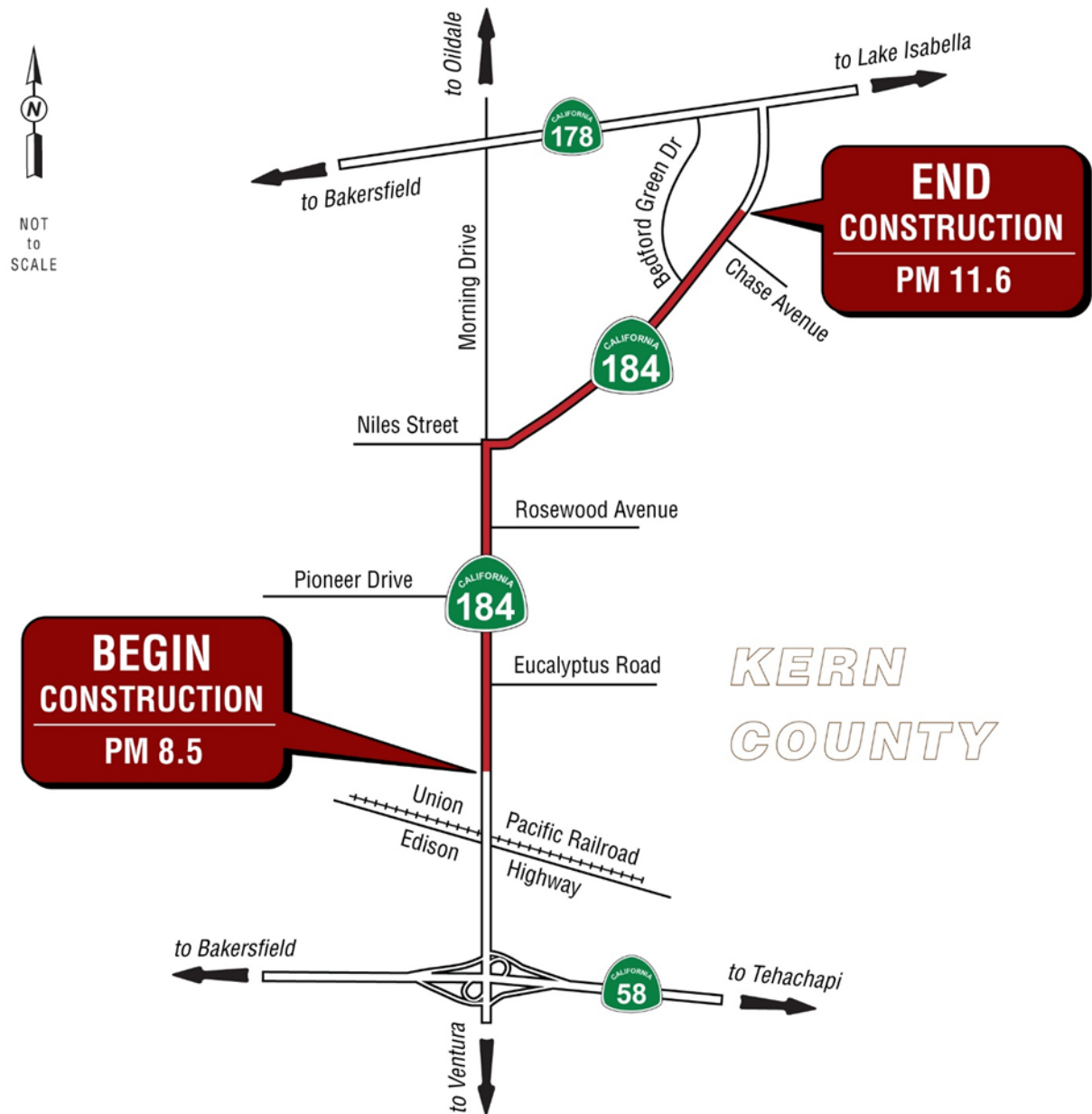
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## Project Location Map



The project is in and near the City of Bakersfield on State Route 184 from 0.1 mile north of Edison Highway to 0.1 mile north of Chase Avenue (post mile 8.5 to post mile 11.6). State Route 184 is a two-lane conventional highway that expands to four lanes in Lamont and Bakersfield. State Route 184 begins at the intersection of State Route 223 and crosses State Route 58, a major freeway that extends throughout the San Joaquin Valley. State Route 184 veers northeast at the intersection of Niles Street and continues until it reaches its junction at State Route 178. The highway's original northerly alignment, just north of Niles Street, is a designated local road called Morning Drive.



### **1.3 Description of Project**

This project proposes to rehabilitate State Route 184 from post mile 8.5 (about 0.1 mile north of Edison Highway) to post mile 11.6 (about 0.1 mile north of Chase Avenue). The shoulders will be widened to 8 feet to allow for a Class 2 bike lane at various locations. All existing curb ramps that are not compliant with the Americans with Disabilities Act and non-standard driveways that require correction will be repaired. A structural pavement section at the intersection of Rosewood Avenue will be replaced. The pavement rehabilitation strategy is to cold plane the existing pavement and overlay with hot mix asphalt, then place a cap of ready hot mix asphalt throughout the project limits. Pavement in spot locations will be reconstructed as needed.

Various sections of damaged sidewalk and pavement will be reconstructed as needed to provide a continuous pedestrian pathway throughout the non-rural areas of the project limits. Drainage improvements such as adjusting manholes, inlets, curbs and gutters, and valves to grade will be required. Several new drain inlets may be added in areas where new sidewalk is proposed. Traffic signals at Pioneer Drive will be replaced. The traffic signal elements may include poles, conduits, detector loops, cabinets replacement, and accessible pedestrian signals.

### **1.4 Surrounding Land Uses and Setting**

State Route 184 serves the local agricultural community south of Bakersfield. The general topography of the project area is characterized by flat agricultural land and is surrounded by residential communities, public school districts, industrial facilities, and commercial businesses. The project area is heavily linked to agriculture, petroleum extraction, and significant water supply issues. Some of the notable sites surrounding the project area include Foothill High School, where there are baseball and track fields within proximity to the project area. In addition, Hillcrest Memorial Park is next to Kern Canyon Road and is designated as a cemetery and mortuary.

### **1.5 Other Public Agencies Whose Approval is Required**

No permits are required for this project.



## **Section 2**      CEQA Environmental Checklist

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### **2.1**      **CEQA Checklist**

This checklist identifies physical, biological, social, and economic factors that might be affected by the proposed project. Potential impact determinations include Significant and Unavoidable Impact, Less Than Significant With Mitigation Incorporated, Less Than Significant Impact, and No Impact. In many cases, background studies performed in connection with a project will indicate that there are no impacts to a particular resource. A No Impact answer reflects this determination. The words “significant” and “significance” used throughout the following checklist are related to CEQA, not NEPA, impacts. The questions in this checklist are intended to encourage the thoughtful assessment of impacts and do not represent thresholds of significance.

Project features, which can include both design elements of the project and standardized measures that are applied to all or most Caltrans projects such as best management practices and measures included in the Standard Plans and Specifications or as Standard Special Provisions, are an integral part of the project and have been considered prior to any significance determinations documented below.

#### **2.1.1**      **Aesthetics**

##### **CEQA Significance Determinations for Aesthetics**

Except as provided in Public Resources Code Section 21099, would the project:

a) Have a substantial adverse effect on a scenic vista?

**No Impact**—The project does not contain any scenic vistas; therefore, there would be no substantial adverse effect (Visual Impact Assessment 2019).

b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?

**No Impact**—The project would not affect scenic resources as it not listed as a State Scenic Highway.

c) In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from a publicly accessible vantage point.) If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?

**Less Than Significant Impact**—The visual character of the project would be compatible with the existing visual character of the corridor. The industrial, commercial, and residential structures provide an inconsistent variety of colors and textures that are typical of a mixed suburban area; however, there are about 43 residences that front State Route 184 that have the potential to be affected by the project. Viewer exposure for neighbors is high, but not as high as for the highway user. The overall change to visual quality is expected to be low; therefore, the project would not substantially degrade the existing visual character or quality of public views of the site and its surroundings (Visual Impact Assessment 2019).

Avoidance and minimization measures can lessen visual impacts caused by the project. These would include replacement highway planting and erosion control. The replacement planting would ensure that any trees or shrubs (planted by Caltrans or by others) removed to construct the project must be replaced by Caltrans. Installation of the replacement planting must either be 1) included with this roadway project and include a one-year plant establishment period; or 2) performed under a separate “spin-off” expenditure authorization, funded from this roadway project and include a three-year plant establishment period. Any graded or otherwise disturbed slopes for construction must be treated with a native or drought-tolerant seed mix following construction to prevent soil erosion (Visual Impact Assessment 2019).

d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?

**No Impact**—The project would not create a new source of substantial light or glare that would adversely affect day or nighttime views in the area. There may be only a temporary increase in light and glare if night work is required.

## **2.1.2 Agriculture and Forest Resources**

### **CEQA Significance Determinations for Agriculture and Forest Resources**

In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state’s inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment Project; and the forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board.

Would the project:

a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?

**No Impact**—The project would not convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use. Currently, the Farmland Mapping and Monitoring program indicates that the project is dominated mostly by Prime Farmland, Semi-Agricultural and Rural Commercial Land, and Urban and Built-Up Land (Kern County Important Farmland Data 2016).

b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?

**No Impact**—The project would not conflict with existing zoning for agricultural use or a Williamson Act contract.

c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code Section 12220(g)), timberland (as defined by Public Resources Code Section 4526), or timberland zoned Timberland Production (as defined by Government Code Section 51104(g))?

**No Impact**—The project would not conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code Section 12220(g)), timberland (as defined by Public Resources Code Section 4526), or timberland zoned Timberland Production (as defined by Government Code Section 51104(g)).

d) Result in the loss of forest land or conversion of forest land to non-forest use?

**No Impact**—The project would not result in the loss of forest land or conversion of forest land to non-forest use. The project is not in a forest area or within proximity to forest land.

e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?

**No Impact**—The project would not involve other changes in the existing environment which, due to their location or nature, could result in conversion of farmland to non-agricultural use or conversion of forest land to non-forest use.

### 2.1.3 Air Quality

#### CEQA Significance Determinations for Air Quality

Where available, the significance criteria established by the applicable air quality management district or air pollution control district may be relied upon to make the following determinations.

Would the project:

a) Conflict with or obstruct implementation of the applicable air quality plan?

**No Impact**—The project would not conflict with or obstruct implementation of the applicable air quality plan, as it is exempt from all emissions analyses, according to the Transportation Conformity Rule (40 Code of Federal Regulation Section 93.126, Table 2).

b) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?

**No Impact**—The project would not result in a considerable net increase of any criteria pollutant under an applicable federal or state ambient air quality standard.

c) Expose sensitive receptors to substantial pollutant concentrations?

**No Impact**—Air pollutants would be generated during construction of the project. The construction equipment contains hydrocarbons, oxides of nitrogen, carbon monoxide, suspended particulate matter, and odors. The largest percentage of pollutants would be windblown dust generated during excavation, grading, hauling, and various other activities. The provisions of Caltrans Standard Specifications, Section 14-9.02 “Air Pollution Control” and Section 10-5 “Dust Control,” require the contractor to comply with the air pollution control rules, ordinances, and regulations and statutes that apply to work performed under the contract, including those provided in Government Code Section 11017 (Noise, Air and Water Studies Memo 2019).

d) Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?

**No Impact**—The project would not result in other emissions that would adversely affect a substantial number of people.

### 2.1.4 Biological Resources

#### CEQA Significance Determinations for Biological Resources

Would the project:

a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?

### **Less Than Significant Impact—**

#### **Bakersfield Cactus:**

The Bakersfield cactus is a federal and California state listed endangered species. The Bakersfield cactus is a perennial succulent that has magenta flowers and pads that are about 7 inches long by 0.5-inch thick with small, sharp bristles. It can grow about 16 inches tall and spread to thickets around 33 feet wide. The cactus prefers sandy soil in the grasslands of Kern County. The Bakersfield cactus is threatened by residential development, agriculture, off-road vehicles, and competition from non-native annual grasses, among other things. No direct impacts to the Bakersfield cactus are expected. Repaving will take place on previously disturbed paved and graded areas. Additional impacts will take place in the existing Caltrans right-of-way in previously disturbed, weedy, and compacted soils. The permanent impacts because of the shoulder widening are minimal due to their small extent and proximity to the well-traveled highway. No Bakersfield cactus was observed during botanical surveys.

Pre-construction surveys will be conducted to determine if any Bakersfield cactus plants are present within the project area. If any cactus plants are found and may be impacted, consultation with U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife will occur. If avoidance is not feasible, then translocation to a suitable habitat may be an option.

#### **Blunt-Nosed Leopard Lizard:**

The blunt-nosed leopard lizard is federally listed as endangered and California state listed as endangered and fully protected. It is a relatively large lizard with a snout to vent length ranging from 3.4 inches to 4.7 inches. Its color varies from yellowish or light gray-brown to dark brown, depending on the surrounding soils and vegetation. The color pattern on its back consists of longitudinal rows of dark spots interrupted by a series of 7 to 10 white, cream-colored, or yellow transverse bands. The blunt-nosed leopard lizard is a scarce resident of sparsely vegetated alkali and desert scrub habitats. Typically, the blunt-nosed leopard lizard can be found at elevations of 100 feet to 2,400 feet above sea level, on alkali flats, desert washes, arroyos, canyons and low foothills. The non-native grasslands at the north end of the project provide marginal habitat for blunt-nosed leopard lizards. The most recent California Natural Diversity Database occurrence was in 2006 about 0.35 mile east of the project site.

The project is not likely to permanently impact blunt-nosed leopard lizards or their habitat. Repaving will occur on previously disturbed paved and graded areas. Additional impacts will occur in the existing Caltrans right-of-way in previously disturbed and compacted soils. The permanent impacts because of the shoulder widening are minimal due to their small extent and proximity to the well-traveled highway. With the implementation of avoidance and minimization measures, no direct impacts to the blunt-nosed leopard lizard are expected.

Due to the potential habitat and recent Natural Diversity Database occurrence to the project, Caltrans has determined the project may affect but is not likely to adversely affect the blunt-nosed leopard lizard. Caltrans has initiated informal consultation with the U.S. Fish and Wildlife Service and received a Letter of Concurrence from the U.S. Fish and Wildlife Service in support of this determination. The Letter of Concurrence is in Appendix D.

Protocol surveys within the project area to determine any presence or sign of the blunt-nosed leopard lizard would be conducted the season prior to the start of construction. If blunt-nosed leopard lizards are found within the project area, the U.S. Fish and Wildlife Service and California Department of Fish and Wildlife will be contacted to discuss ways to proceed with the project and avoid take to the maximum extent possible. A biological monitor would be onsite during initial ground-disturbing activities. Requiring low speed limits within the construction site will lessen the probability that blunt-nosed leopard lizards could be run over by vehicles and equipment.

### **San Joaquin Kit Fox:**

The San Joaquin kit fox is a small canid species that is endemic to the San Joaquin Valley in California and is federally listed as endangered and California state listed as threatened. This is the smallest species of fox in North America, measuring 20 inches long and weighing about 5 pounds. An identifying characteristic of the San Joaquin kit fox is the color of its coat ranging from tan to buff gray; it has a whitish belly and black-tipped tail. The non-native grassland along the north end of the project provides potential foraging and denning habitat for the San Joaquin kit fox. The closest California Natural Diversity Database occurrence was in 2006 within the project area. However, active San Joaquin kit fox dens were found just outside the action area in 2019, so there is potential for this species to move into the area.

The project is not likely to permanently impact the San Joaquin kit fox or its habitat. Repaving will take place on previously disturbed paved and graded areas. Additional impacts will take place in the existing Caltrans right-of-way in previously disturbed and compacted soils. The permanent impacts because of the shoulder widening are minimal due to their small extent and proximity to the well-traveled highway. No night work or k-rail are expected on this



project, minimizing the potential for disturbance from construction noise and lights, as well as barriers to movement. With the implementation of avoidance and minimization measures, no direct impacts to the San Joaquin kit fox are expected.

Due to the recent occurrence of San Joaquin kit foxes next to the project, Caltrans has determined the project may affect but is not likely to adversely affect the San Joaquin kit fox. Caltrans has initiated informal consultation with the U.S. Fish and Wildlife Service and received a Letter of Concurrence from the U.S. Fish and Wildlife Service in support of this determination. The Letter of Concurrence is in Appendix D.

The construction contractor will comply with all construction site best management practices specified in the Storm Water Pollution Prevention Plan and any other permit conditions to minimize the introduction of construction-related contaminants and mobilization of sediment in and next to the action areas at all project locations, as necessary.

To minimize impacts to the San Joaquin kit fox, the following avoidance and minimizations measures will be used:

- Pre-construction and pre-activity surveys would be conducted no less than 14 days and no more than 30 days prior to the beginning of ground disturbance and/or construction activities or any project activity likely to impact the San Joaquin kit fox. Surveys for the San Joaquin kit fox and its dens will be performed throughout the project footprint as well as within 200 feet of the footprint.
- Food trash and other garbage that may attract wildlife to the work area would be disposed of in closed containers and removed at the end of each work day. Feeding of any wildlife would be prohibited.
- All construction pipes, culverts, or similar structures with a diameter of 4 inches or greater that are stored at a construction site for one or more overnight periods should be thoroughly inspected for kit foxes before the pipe is used or moved in any way.
- The speed limit for daytime construction-related traffic within the work zones will be limited to a maximum of 20 miles per hour (except on state highways).
- To prevent the inadvertent entrapment of San Joaquin kit foxes during construction, all excavated, steep-walled holes or trenches more than 2 feet deep will be covered at the close of each work day or fitted with escape ramps constructed of fill or wooden planks. These will be checked daily for the duration they are covered. Prior to any holes or trenches being filled, they will be thoroughly inspected for trapped individuals.
- Use of rodenticides and herbicides in project areas should be restricted.

- Firearms (except by qualified and permitted public safety agents) and pets would not be permitted on the work site.
- To the extent possible, a biologist would be available on-call during all construction periods when not present onsite.
- If potential or known dens are discovered prior to or during construction, disturbance to any potential or known San Joaquin kit fox dens will be avoided.
- Potential and atypical dens that are located at least 50 feet from construction will be protected with a 50-foot zone. Known dens that are located at least 100 feet from construction will be protected with a 100-foot zone. In instances where 50-foot or 100-foot exclusion zones cannot be maintained, potential and/or known dens will be monitored for three consecutive nights using tracking medium and/or a remote sensor camera. If potential or known dens are verified to be occupied and an exclusion zone cannot be maintained, the possibility for reduced exclusion zones to be established will be determined in coordination with the U.S. Fish and Wildlife Service. Potential and known dens will continue to be monitored for the duration of work in the area. Details pertaining to monitoring efforts will be discussed with the U.S. Fish and Wildlife Service.
- A qualified biologist will check potential and known dens every two weeks to ensure that the no-work buffers remain intact for the duration of the project. If animal activity is observed, the biologist will monitor the site for a minimum of three consecutive nights to determine whether the potential or known dens are occupied or unoccupied.
- If a natal or pupping den is discovered either within the project footprint or within 200 feet of the footprint, Caltrans will notify the U.S. Fish and Wildlife Service and California Department of Fish and Wildlife immediately.

### **Burrowing Owl:**

The burrowing owl is recognized as a Species of Special Concern by the California Department of Fish and Wildlife, protected under California Fish and Game Code Section 3503, and federally protected by the Migratory Bird Treaty Act. A small brown owl (typically 8 inches tall) with barred underparts, the burrowing owl primarily uses underground burrows for nesting and shelter. The burrowing owl is a year-round resident of open, dry grasslands, desert habitats, and grass, forb, and shrub stages of pinyon-juniper and ponderosa pine habitats. It may inhabit agricultural landscapes, especially those with low vegetation and loose soils.

General reconnaissance surveys were conducted on June 13 and November 21, 2019. Potential habitat was observed within the project footprint at some locations in the undeveloped fields. No owls or potential burrows were

observed within the project footprint during these surveys. California Natural Diversity Database burrowing owl occurrences are recorded within 2 miles of the project.

The project is not likely to permanently impact burrowing owls or their habitat. Repaving will take place on previously disturbed paved and graded areas. All additional impacts will take place in the existing Caltrans right-of-way in previously disturbed and compacted soils. The permanent impacts due to the shoulder widening are minimal due to their small extent and proximity to the heavily traveled highway. Trenching and staging areas occurring outside of the existing roadway will be surveyed for signs of burrowing owls prior to disturbance. With the implementation of avoidance and minimization measures, no direct impacts to burrowing owls are expected.

A biologist will conduct a preconstruction survey for burrowing owls within the project area. If burrowing owls are found within the project area, a no-work buffer would be enforced.

No disturbance should occur within 160 feet of occupied burrows during the non-breeding season (September 1 to January 31) or within 250 feet during the breeding season (February 1 to August 31) without the presence of a biological monitor. Once applied, nesting season disturbance buffers will remain in place until a biologist verifies that juveniles are foraging independently and are capable of independent survival.

### **Migratory Birds:**

Bird species protected by the Migratory Bird Treaty Act of 1918 and California Department of Fish and Game Code Section 3511 use the project area for roosting, nesting, and foraging year-round. With implementation of avoidance and minimization measures, impacts to migratory birds are not expected to occur because of the project.

If removal of trees is deemed necessary, either removal would occur outside of nesting season (February 1 to September 30) or trees would be inspected and cleared by a qualified biologist prior to removal.

A preconstruction survey for migratory birds within the project area would be conducted before the start of construction. If an active nest were detected, a no-work buffer around the nest site may be established to prevent nesting disturbance. Work may be temporarily suspended if nesting activity cannot be prevented. Standard specifications would be included in the construction bid package to avoid impacts to migratory birds.

b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?

**No Impact**—There would not be any substantial adverse effect on riparian habitat or other sensitive natural communities. Sensitive habitat or natural communities of special concern do not occur within the action areas (Natural Environment Study 2019).

c) Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

**No Impact**— There are no protected wetlands in the project area (Natural Environment Study 2019).

d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

**No Impact**—No essential fish habitat is within the project limits. No consultation with the National Oceanic and Atmospheric Administration Fisheries will be completed (Natural Environment Study 2019).

e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?

**No Impact**—The project does not conflict with any local policies or ordinances protecting biological resources for Kern County.

f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

**No Impact**—The project would not interfere with any adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

### **2.1.5 Cultural Resources**

#### **CEQA Significance Determinations for Cultural Resources**

Would the project:

a) Cause a substantial adverse change in the significance of a historical resource pursuant to Section 15064.5?

**No Impact**—No historical resources or historic properties were identified within the project area (Historic Property Survey Report 2020).

b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5?

**No Impact**—No archaeological resources would be impacted.

c) Disturb any human remains, including those interred outside of dedicated cemeteries?

**No Impact**—The project is not expected to disturb any human remains. If human remains are discovered, California Health and Safety Code Section 7050.5 states that further disturbances and activities will stop in any area or nearby area suspected to overlie remains, and the county coroner will be contacted. If the remains are thought by the coroner to be Native American, the coroner will notify the Native American Heritage Commission, which, pursuant to Public Resources Code Section 5097.98, will then notify the Most Likely Descendent. At that time, the person who discovered the remains will contact the District 6 Native American Coordinator so that the coordinator can work with the Most Likely Descendent on the respectful treatment and disposition of the remains. Further provisions of Public Resources Code 5097.98 are to be followed as applicable.

## **2.1.6 Energy**

### **CEQA Significance Determinations for Energy**

Would the project:

a) Result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?

**No Impact**—The project would not result in significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources. Caltrans would apply best management practices to ensure that energy resources are used efficiently.

b) Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?

**No Impact**—The project would not conflict with or obstruct a state or local plan for renewable energy and energy efficiency. The project is compliant with Kern County's renewable energy plans.

## **2.1.7 Geology and Soils**

### **CEQA Significance Determinations for Geology and Soils**

Would the project:

a) Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving:

i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42?

**No Impact**—The project is not located near any fault zones and would involve only minimal ground disturbance (California Geological Survey, California Department of Conservation 2018).

ii) Strong seismic ground shaking?

**No Impact**—The project would involve only minimal ground disturbance to rehabilitate existing pavement and repair damaged sidewalks. No strong seismic ground shaking is anticipated since the project is not located near any fault zones.

iii) Seismic-related ground failure, including liquefaction?

**No Impact**—The project would not cause seismic-related ground failure, including liquefaction. The project is not in an Earthquake Fault Zone, Liquefaction Zone, Landslide Zone, or has not yet been evaluated (California Geological Survey, California Department of Conservation 2018).

iv) Landslides?

**No Impact**—The project would not cause any landslides, as it is not located near any sloped surfaces. The project is not located within a Landslide Zone (California Geological Survey, California Department of Conservation 2018).

b) Result in substantial soil erosion or the loss of topsoil?

**No Impact**—There would be no substantial soil erosion or loss of topsoil. Excavation in the project area will impact low- and high-potential paleontological resources that underlie the post mile segment of the project; however, the extent and intensity of the proposed excavations are expected to be limited to shallow soils and/or localized areas (Paleontological Identification Report 2019).

c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?

**No Impact**—The project is not located on unstable soils, and soils would not become unstable because of the project.

d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property?

**No Impact**—The project is not located on expansive soil or on soils that would create substantial direct or indirect risks to life or property, as defined in Table 18-1-B of the Uniform Building Code (1994). The soil in the project area consists of inorganic clays of low to medium plasticity and sandy/silty/lean clays (Updated Preliminary Structural Section Recommendations 2019).

e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?

**No Impact**—The project would not generate waste water; therefore, it would not impact any existing water facilities.

f) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?

**No Impact**—The project would not destroy a unique paleontological resource or unique geologic feature.

## **2.1.8 Greenhouse Gas Emissions**

### **CEQA Significance Determinations for Greenhouse Gas Emissions**

Would the project:

a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?

and

b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?

**Less than Significant Impact**—While the project will result in greenhouse gas emissions during construction, it is expected that the project will not result in any increase in operational greenhouse gas emissions. The project does not conflict with any applicable plan, policy, or regulation adopted to reduce the emissions of greenhouse gases. With implementation of construction greenhouse gas-reduction measures, the impact would be less than significant (Climate Change and Greenhouse Gases Analysis 2020).

## **2.1.9 Hazards and Hazardous Materials**

### **CEQA Significance Determinations for Hazards and Hazardous Materials**

Would the project:

a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?

**Less Than Significant Impact**—Due to the historic use of leaded gasoline, concentrations of lead from vehicle emissions have settled along the unpaved areas of older highways. The project would include work off the paved shoulder next to the highway, and excess soil will be generated. Construction activities could expose workers and/or the public to lead. A Preliminary Site Investigation would be conducted to determine lead concentrations. Regulated soils could be used onsite per Department of Toxic Substance Control's Aerially Deposited Lead-Contaminated Soil Agreement, providing all requirements are met, or disposed of at the appropriate landfill. Non-regulated/non-hazardous soil could be disposed of or relinquished to the contractor without restriction (Initial Site Assessment 2019).

b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?

**Less Than Significant Impact**—Standard Special Provisions would be included in the construction contract package to address proper handling and disposal of lead in surface soils and in roadway pavement striping/markings. The project would create a less than significant hazard to the public or the environment that would result in the release of hazardous materials. Tanks, piping, or potential soil contamination at the gas stations would not likely be encountered since maximum construction depths would only be to 1 foot (Initial Site Assessment 2019).

c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?

**No Impact**—Douglas Fletcher Elementary School and Paul Cato Middle School are located within the project boundaries, but they would not be impacted by the project.

d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?

**No Impact**—Caltrans prepared an Initial Site Assessment for the project in November 2019, which included a regulatory database search.

Two facilities that are on the Cortese List are adjacent to or within the project boundaries, but should not impact the project. They are:

- 1) Hillcrest Memorial Park, 9101 Kern Canyon Road, which is a closed Leaking Underground Storage Site as of November 1986.



- 2) The Douglas Fletcher Elementary and Paul Cato Middle Schools site, which is a Department of Toxic Substances Control Cleanup Site. There is no action required.

e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard or excessive noise for people residing or working in the project area?

**No Impact**—The project is not located within an airport land use plan and therefore would not result in a safety hazard or excessive noise impacts.

f) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?

**No Impact**—The project work would not interfere with an adopted emergency response plan or emergency evacuation plan. Emergency response personnel would be contacted in case of any road closures during construction.

g) Expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires?

**No Impact**—According to the 2007 California Department of Forestry and Fire Protection Fire Hazard Severity Zones in the State Responsibility Area Map for Kern County, the project area does not lie in a severity zone. There would not be a significant risk of loss, injury or death involving wildland fires.

## **2.1.10 Hydrology and Water Quality**

### **CEQA Significance Determinations for Hydrology and Water Quality**

Would the project:

a) Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality?

**No Impact**—The project would not violate any water quality standards or waste discharge requirements or substantially degrade surface or ground water quality (Noise, Air and Water Studies Memo 2019).

b) Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?

**No Impact**—The project would not interfere substantially with groundwater recharge or impede sustainable groundwater management. The project would only require drainage improvements and the addition of new drain inlets in areas where new sidewalk is proposed.

c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:

i) Result in substantial erosion or siltation on- or off-site;

**No Impact**—The project would not result in substantial erosion or siltation.

ii) Substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site;

**No Impact**—The project would not increase the rate or amount of surface runoff that would result in flooding. The work would not impact the floodplain because the improvement would not cause an increase in roadway elevation or alter the natural flow of the existing floodplain (Location Hydraulic Study 2019).

iii) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or

**No Impact**—The project would not contribute to runoff water that would exceed the capacity of existing or planned storm water drainage systems. The project would not contribute to increased water runoff or pollutants.

iv) Impede or redirect flood flows?

**No Impact**—The project would not impede or redirect flood flows.

d) In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation?

**Less than Significant Impact**—The project is not in a flood hazard, tsunami, or seiche zone. The project would not result in a risk release of pollutants due to project inundation because it does not lie in an inundation zone (California Geological Survey, California Department of Conservation 2018).

e) Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?

**No Impact**—The project would not conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan. Best management practices will be incorporated to ensure that sustainable water strategies are implemented.

### 2.1.11 Land Use and Planning

#### CEQA Significance Determinations for Land Use and Planning

Would the project:

a) Physically divide an established community?

**No Impact**—The project would not physically divide an established community because the project involves the rehabilitation of an existing facility that would improve transportation options for the established community.

b) Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?

**No Impact**—The project would not cause an environmental impact due to a conflict with any land use plan, policy or regulation. The goal of the project is to improve an existing facility and prevent further degradation to an existing highway.

### 2.1.12 Mineral Resources

#### CEQA Significance Determinations for Mineral Resources

Would the project:

a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?

**No Impact**—The project would not result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state.

b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?

**No Impact**—The project would not result in a loss of availability of any locally important mineral resource recovery site delineated on a local general plan. The project area does not contain any significant mineral resources (Department of Conservation, Mineral Resource Zones for Kern County 2015).

### 2.1.13 Noise

#### CEQA Significance Determinations for Noise

Would the project result in:

a) Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?

**Less Than Significant Impact**—The project would generate construction noise impacts that may vary for different areas of the project site, depending on the construction activities. Construction activities would conform to Chapter 14-8 “Noise and Vibration” from the Caltrans Standard Specifications, 2018. The Caltrans specification states that noise resulting from work activities should not exceed the maximum sound level of 86 A-weighted decibels at 50 feet from the job site from 9:00 p.m. to 6:00 a.m. (Noise, Air and Water Studies Memo 2019).

b) Generation of excessive groundborne vibration or groundborne noise levels?

**Less Than Significant Impact**—The project would not generate excessive groundborne vibration or groundborne noise levels; however, the degree of construction noise impacts may vary for different areas of the project site and depending on the construction activities. Some of the sensitive receptors that are close to the freeway may be impacted. To alleviate vibration disturbance, newer equipment with improved noise muffling may be used to ensure that all equipment items have the manufacturers’ recommended noise abatement measures. Caltrans may also use construction methods that would provide the lowest level of noise and ground vibration impact such as alternative low-noise pile installation methods.

c) For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?

**No Impact**—The project is not located within the vicinity of a private airstrip or an airport land use plan. The project is not within two miles of a public airport or public use airport, which would not expose people residing or working in the project area to excessive noise levels.

## **2.1.14 Population and Housing**

### **CEQA Significance Determinations for Population and Housing**

Would the project:

a) Induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?

**No Impact**—The project would not induce substantial unplanned population growth in an area, directly or indirectly. The project involves rehabilitation of existing pavement and sidewalks, which does not include new homes, businesses, extension of roads or infrastructure.

b) Displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere?

**No Impact**—The project would not displace existing people or housing; therefore, construction of replacement housing would not be required.

### **2.1.15 Public Services**

#### **CEQA Significance Determinations for Public Services**

a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

Fire protection?

**No Impact**—The project would not impact fire protection services.

Police protection?

**No Impact**—The project would not impact police protection.

Schools?

**No Impact**—The project would not significantly impact or physically alter the existing schools that are located within the project area.

Parks?

**No Impact**—The project would not impact any parks.

Other public facilities?

**No Impact**—The project would not impact any other public facilities.

### **2.1.16 Recreation**

#### **CEQA Significance Determinations for Recreation**

a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?

**No Impact**—The project work would not increase the use of existing neighborhood parks or recreational facilities.

b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?

**No Impact**—The project work would not require the construction or expansion of recreational facilities.

### 2.1.17 Transportation

#### CEQA Significance Determinations for Transportation

Would the project:

a) Conflict with a program plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities?

**No Impact**—The project work would not conflict with any adopted program plan, ordinance, or policy addressing the circulation system. This project proposes to rehabilitate existing State Route 184. The shoulders will be widened to 8 feet to allow for a Class 2 bike lane. All existing curb ramps that do not comply with the American with Disabilities Act and any non-standard driveways that require correction will be repaired. The project would upgrade existing infrastructure to improve the current traffic circulation system and transit facilities.

b) Conflict with or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)?

**No Impact**—The project would improve only existing pavement features and repair damaged pedestrian facilities; therefore, the project would not increase capacity or contribute to an increase in vehicle miles traveled.

c) Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?

**No Impact**—The project would not increase hazards due to a geometric design feature or incompatible use. The purpose of the project is to rehabilitate existing infrastructure and improve an existing roadway.

d) Result in inadequate emergency access?

**No Impact**—The project work would not result in inadequate emergency access. Caltrans would ensure traffic management practices are in place to provide emergency access.

## **2.1.18 Tribal Cultural Resources**

### **CEQA Significance Determinations for Tribal Cultural Resources**

Would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:

a) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k), or

**No Impact**—No historical resources or historic properties were identified within the project area. The project would not cause any substantial adverse changes to protected cultural resources in the project area (Historic Property Survey Report 2020).

b) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

**No Impact**—No significant cultural resources or archaeological sites were identified within the project area. If buried cultural materials are encountered during construction, it is Caltrans' policy that work stop in that area until a qualified archaeologist can evaluate the nature and significance of the find.

## **2.1.19 Utilities and Service Systems**

### **CEQA Significance Determinations for Utilities and Service Systems**

Would the project:

a) Require or result in the relocation or construction of new or expanded water, wastewater treatment or storm water drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects?

**Less Than Significant Impact**—The project would involve relocation of utility poles for sidewalk or curb ramp construction. Underground utilities, natural gas lines and fiber optic crossings are also located within the project limits. Some of the utility poles would require relocation for Americans with Disabilities Act compliance. Surveying and potholing for utility crossings would be required during the Plans, Specifications & Estimates phase of development to positively identify potential utility conflicts with the proposed

design and field-verified by the contractor during construction to confirm exact locations.

b) Have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?

**No Impact**—The project work would not require additional water supplies within the project area.

c) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?

**No Impact**—The project would not impact any existing or future wastewater treatment plants. The project work would not contribute to additional wastewater or require a determination from a wastewater treatment provider.

d) Generate solid waste in excess of state or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?

**No Impact**—The project work would not generate solid waste exceeding state or local standards. Caltrans would use recycled materials, such as existing hot mix asphalt, shoulder material, traffic signals, lighting and road signs to maximize the use of non-renewable resources and contribute less solid waste to the environment.

e) Comply with federal, state, and local management and reduction statutes and regulations related to solid waste?

**No Impact**—The project would comply with federal, state and local regulations regarding management and reduction of solid waste. Caltrans would use best management practices to ensure proper disposal of all waste.

## **2.1.20 Wildfire**

### **CEQA Significance Determinations for Wildfire**

If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project:

a) Substantially impair an adopted emergency response plan or emergency evacuation plan?

**No Impact**—The project would not substantially impair an adopted emergency response plan or emergency evacuation plan. Caltrans would



coordinate with Kern County to communicate any vital emergency information prior to construction.

b) Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to, pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?

**No Impact**—The project includes work on existing pavement and drainage features; therefore, it would not pose significant wildfire risks. Caltrans would implement best management practices to minimize the risk of wildfires.

c) Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?

**No Impact**—The project would not require installation or maintenance of new fuel breaks, emergency water sources, or utilities; therefore, the project would not worsen fire risk or temporary impacts to the environment.

d) Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?

**No Impact**—The project would not expose people or structures to significant risks, including downslope or downstream flooding or landslides.

## **2.1.21 Mandatory Findings of Significance**

### **CEQA Significance Determinations for Mandatory Findings of Significance**

a) Does the project have the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?

**Less Than Significant Impact**—The project would not have the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory. Caltrans would employ best management practices, use avoidance and minimization measures, and

follow standard specifications to ensure that the project does not substantially impact the environment.

b) Does the project have impacts that are individually limited, but cumulatively considerable? (“Cumulatively considerable” means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.)

**No Impact**—The project would not have cumulatively considerable impacts because the purpose of the project is to rehabilitate and prevent further deterioration to existing infrastructure.

c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?

**Less Than Significant Impact**—The project would not have any substantial adverse effects on human beings, either directly or indirectly. Appropriate measures would be in place to minimize and avoid all impacts to the environment in the project area.

# Appendix A Title VI Policy Statement

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STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

Gavin Newsom, Governor

## DEPARTMENT OF TRANSPORTATION

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November 2019

## NON-DISCRIMINATION POLICY STATEMENT

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<https://dot.ca.gov/programs/business-and-economic-opportunity/title-vi>.

To obtain this information in an alternate format such as Braille or in a language other than English, please contact the California Department of Transportation, Office of Business and Economic Opportunity, at 1823 14<sup>th</sup> Street, MS-79, Sacramento, CA 95811; (916) 324-8379 (TTY 711); or at [Title.VI@dot.ca.gov](mailto:Title.VI@dot.ca.gov).

A blue ink signature of Toks Omishakin, consisting of a stylized 'T' followed by a series of loops and a horizontal line.

Toks Omishakin  
Director

*"Provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability"*



## **Appendix B** Comment Letters and Responses

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This appendix contains the comments received from the California Department of Fish and Wildlife, Native American Heritage Commission, and the Department of Toxic Substances Control during the public review period between May 22, 2020 and June 21, 2020 for the draft environmental document. The document was sent to the State Clearinghouse for State Agencies comments which are included in this Appendix, if applicable. No comments from the general public were received.

A Caltrans response, shown within double slashes (two slashes start the Caltrans response and two slashes come at the end the response), follows each comment within the comment letters in this section. Related information is incorporated, where appropriate, into the body of this final environmental document.

Note: The comment letters are stated verbatim, with acronyms, abbreviations and any original grammatical or typographical errors. Be aware that some passages may also include internet paths (addresses) that contain a double slash; do not confuse that structure with the Caltrans responses that are set apart by double slashes.

## **Comment Letter A: California Department of Fish and Wildlife**

June 16, 2020

Som Phongsavanh

California Department of Transportation, District 6 855 M Street, Suite 200

Fresno, California 93721

**Subject: Morning Drive 3R Rehabilitation Project (Project Initial Study with proposed Negative Declaration State Clearinghouse No. 2020059032)**

Dear Ms. Phongsavanh:

The California Department of Fish and Wildlife (CDFW) received a proposed Negative Declaration (ND) and its supporting Initial Study (IS) prepared by the California Department of Transportation (Caltrans) for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife.

Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under 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 resource.

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.), related authorization as provided by the Fish and Game Code will be required.

## **PROJECT DESCRIPTION SUMMARY**

Proponent: Caltrans

Objective: Caltrans proposes to rehabilitate an approximately three-mile segment of State Route 184 (SR 184) between Dunnsmere Street on the south, to Chase Avenue on the north (Project site). All Project-related activities will occur within the existing right-of-way within the paved travel lanes, the unpaved but compacted and engineered shoulder backing, or within the ruderal areas beyond the travel lanes and shoulder backing. The rehabilitation work would include the replacement of curb ramps and non-standard driveways, repaving of the traffic lanes, and the widening of shoulder backing along the three-mile length of the Project right-of-way. While it is not detailed in the IS, CDFW assumes that Caltrans' plans to "widen" the shoulder backing along the right-of-way involves the conversion of ruderal habitat areas within the right-of-way but beyond existing shoulder backing, to engineered/compacted shoulder backing.

Location: The Project site exists between post mile 8.5 and post mile 11.6 and is generally east of the City of Bakersfield in Kern County.

Timeframe: Unspecified.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the following comments to assist Caltrans in adequately identifying and sufficiently reducing to less-than-significant the potentially significant, direct and indirect Project-related impacts to fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

Currently, the proposed ND/IS indicates that the Project-related impacts to Biological Resources would be less-than-significant with implementation of specific avoidance and minimization efforts. In particular, Caltrans concludes there will be: 1) less-than- significant impacts to the State threatened and federally endangered San Joaquin kit fox (*Vulpes mutica macrotis*, SJKF), the State and federally endangered and State fully

protected blunt-nosed leopard lizard (*Gambelia sila*), and migratory birds in general with implementation of proposed avoidance and minimization measures, and 2) no Project- related impacts to both the State and federally

endangered Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*) and the State threatened Swainson's hawk (*Buteo swainsoni*).

However, as currently drafted, it is unclear: 1) whether some of the species-specific and general migratory bird measures proposed in the IS sufficiently reduce, to less-than-significant, the potential Project-related impacts to those species, and 2) how Caltrans came to the conclusion that there will be no impacts to two State-listed and one fully protected species CDFW considers potentially present in the vicinity of the Project.

Therefore, CDFW does not agree with these conclusions and will herein suggest measures to survey for and avoid Project-related impacts to these species, thereby reducing to less-than-significant the Project-related impacts. CDFW also recommends that Caltrans identify a path forward in the event avoidance of three of the four species is not feasible.

## **I. Environmental Setting and Related Impact**

Would the Project have a substantial adverse impact, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or the United States Fish and Wildlife Service (USFWS)?

### **COMMENT 1: San Joaquin Kit Fox (SJKF)**

Issue: The Project activities will involve varying degrees of ground disturbance and the staging and laydown of equipment and materials at discreet locations along the three-mile segment of SR 184. Some of the Project activities may constitute a novel disturbance sufficient to cause denning SJKF to abandon their dens causing increased susceptibility to predation and resulting in abandoned pups. Caltrans proposes pre-activity clearance surveys of the Project footprint between 14 and 30 days of commencing project activities, the daily inspection of deep trenches and steep-walled holes within the Project footprint, and the inspection of pipes greater than three inches in diameter prior to burying, capping, or moving in any way.

However, while Caltrans proposes surveying for, and maintaining no-disturbance buffers for atypical/potential dens and known dens at and near the Project right-of-way, Caltrans does not address or recognize the vulnerability of natal dens. Further, Caltrans indicates that only USFWS will be notified/consulted in the event individual SJKF or dens are detected.

**//Caltrans Response to Comment 1:** There were no dens within the action area for the project. There was an active natal den ½-mile south of the Morning Drive project in 2019 where a San Joaquin kit fox came into an active project site to den. Caltrans had monitors during construction, and the



San Joaquin kit fox was successful in rearing 5 pups, which dispersed while within an active construction site. In addition, the location of the den was adjacent to several businesses, including a gas station, mini mart, hotels, and a truck school, and heavy highway traffic where there was always noise and disturbance. If San Joaquin kit foxes come back to this den during construction of the Morning Drive project, it is Caltrans' opinion that any denning by a San Joaquin kit fox would not be disturbed by construction activities ½-mile away or more. If San Joaquin kit foxes are found during preconstruction surveys, Caltrans will notify the California Department of Fish and Wildlife in addition to the U.S. Fish and Wildlife Service.//

**Specific Impacts:** While CDFW agrees with Caltrans' plans to conduct pre-activity surveys and daily inspections of trenches, ditches, and materials within the Project footprint, CDFW recommends Caltrans propose no-disturbance buffers around natal dens at and near the Project right-of-way. Additionally, CDFW recommends Caltrans propose notifying CDFW in the event individual SJKF or dens are detected during the surveys and/or inspections, since SJKF are also listed under CESA.

**//Caltrans Response to Comment 1 (Specific Impacts):** If natal dens are found on or near the project site, appropriate buffers will be established after coordination with the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife.//

**Evidence impact would be significant:** While habitat loss resulting from agricultural, urban, and industrial development is the primary threat to SJKF (Cypher et al., 2013), disturbance in proximity to a den can result in unsuccessful pupping and cause individuals to become more susceptible to predation. Both results of the Project-related disturbance could constitute significant impacts to the species.

### **Recommended Potentially Feasible Avoidance and Mitigation**

**Measure(s):** Because SJKF are known to occur in the general vicinity of the Project footprint and because natal dens are especially vulnerable to disturbance and because SJKF are a State threatened species, CDFW recommends the following edits to the SJKF avoidance and minimization measure section of the IS. Further, CDFW recommends these revised measures be made conditions of Project approval.

### **Recommended Edits to Avoidance and Minimization Measures SJKF on page 15 of the IS.**

CDFW recommends the pre-activity clearance surveys for SJKF be conducted following the USFWS "Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance" (2011). Specifically, CDFW advises conducting these surveys no less than 14 days and no more than 30 days prior to beginning of Project activities to

identify SJKF dens at and within 250 feet of the Project footprint, and that Caltrans coordinate with USFWS and CDFW in the event that individuals and/or dens are detected during these surveys. Further, CDFW recommends Caltrans propose no-disturbance buffers around natal dens as well as atypical, potential, and known SJKF dens. The surveys can be limited to 100 feet beyond the Project footprint if work commences and will not extend into the pupping season. Through the aforementioned coordination, CDFW recommends a 250-foot no-disturbance buffer around natal dens, a 150-foot no-disturbance buffer around known dens, and a 50-foot no-disturbance buffer around potential or atypical dens, and absolutely no disturbance to the dens within the above buffers without contacting CDFW and obtaining written authorization to do so. If the aforementioned edits to the existing avoidance and minimization measures are not made, and/or not feasible, CDFW recommends Caltrans propose obtaining incidental take coverage pursuant to Section 2081(b) of Fish and Game Code in the revised IS, and that the revised IS support a Mitigated Negative Declaration. In summary, if the edited avoidance measure is not feasible, acquisition of a State Incidental Take Permit may be warranted to reduce to less-than-significant the unavoidable Project-related impact on SJKF.

**//Caltrans Response to Comment 1 (Recommended Edits):** Caltrans proposes to follow the U.S. Fish and Wildlife Service Standard recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance. Pre-construction surveys will be conducted where Caltrans has the legal authority to do so. At this time, Caltrans is not anticipating take of the species and, therefore, does not propose to acquire a Section 2081 incidental take permit.

If a natal den is found within the action area, Caltrans will coordinate with the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife. Appropriate buffers will be implemented after agency coordination. //

## **COMMENT 2: Migratory Birds including Swainson's Hawk (SWHA)**

Issue: Migratory birds, including SWHA, are known to have nested in the vicinity of the Project. The Project activities will involve varying degrees of ground disturbance within the right-of-way and CDFW considers it possible that the Project-related activities would represent a novel stimulus which could result in nest abandonment to migratory birds and to SWHA specifically if they occur within ½-mile of an active SWHA nest. This nest failure of the State threatened SWHA would represent a significant impact to SWHA and possibly take as it is defined in section 86 of Fish and Game Code.

**//Caltrans Response to Comment 2:** The closest California Natural Diversity Database occurrence of the Swainson's hawk is approximately 6 miles west of the project from 1935. There was no sign of any raptor nests within the

project limits, and there are very few available nesting trees within the project limits.//

**Specific Impacts:** In the IS, Caltrans addresses migratory birds in general, but does not specifically address the potential presence and/or Project-related impacts to SWHA. Further, while Caltrans proposes maintaining no-disturbance buffers around active nests, Caltrans does not assign numeric parameters for these buffers and only proposes consultation with USFWS in the event active nests occur near the Project site.

**Evidence impact would be significant:** SWHA exhibit high nest-site fidelity year after year and lack of suitable nesting habitat in the San Joaquin Valley limits their local distribution and abundance (CDFW 2016). Adoption of the ND as it is written will allow Project-related activities that will involve ground disturbance, grading, and excavation employing heavy equipment and work crews outside unquantified “no-work buffers” around SWHA nests. These activities occurring within ½-mile of active SWHA nests have the potential to result in nest abandonment, significantly impacting nesting SWHA.

**//Caltrans Response to Comment 2 (Evidence impact would be significant):** No Swainson’s hawks have been documented nesting within ½-mile of the project, and no nests or potential nests were seen during biological surveys for the project; therefore, no direct take of the species is anticipated. There are very few potential nesting trees present, and no tree removal is anticipated. Since there are no direct impacts anticipated to Swainson’s hawks or potential nesting habitat, the proposed Morning Drive project is not expected to significantly impact Swainson’s hawks.//

### **Recommended Potentially Feasible Avoidance and Mitigation**

**Measure(s):** Because the Project-related activities represent novel stimuli and threaten nest abandonment, CDFW recommends Caltrans propose a ½-mile no-disturbance buffer around active SWHA nests in order to reduce to less-than-significant the Project-related impacts to the species. CDFW recommends edits to the Migratory Bird avoidance and minimization measures in the IS. Further, CDFW recommends these edited measures be made quantifiable and enforceable conditions of Project approval.

**//Caltrans Response to Comment 2 (Recommended Potentially Feasible Avoidance and Mitigation Measure):** No Swainson’s hawk nests were found onsite during surveys. Caltrans proposes to implement a 500-foot buffer if an active Swainson’s hawk nest is identified within ½-mile of the action area. It is Caltrans’ opinion that the ½-mile buffer is excessive. Caltrans acknowledges the concerns raised by the California Department of Fish and Wildlife, however it has been Caltrans’ experience on multiple projects that a reduced buffer combined with monitoring allowed construction to continue without having a negative impact to any nesting Swainson’s hawks in the area.//

**Recommended Edits to Migratory Bird Avoidance and Minimization Measures to specifically address SWHA on page 16 of the IS.**

Currently, under the Migratory Bird avoidance and minimization measures section of the IS, Caltrans proposes a “no-work buffer around” active migratory bird nests detected during preconstruction surveys. CDFW recommends Caltrans edit this measure to propose numeric no-work buffers for unlisted passerine, raptors, and listed raptors (including SWHA). Alternatively, the species-specific measures for SWHA could be focused and discussed outside the Migratory Bird section.

CDFW recommends Caltrans edit the Migratory Bird avoidance and minimization measure section of the IS to require pre-activity surveys for active nests no more than 10 days prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW then recommends Caltrans propose a minimum no-disturbance buffer of 250 feet around active nests of non-listed passerine 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 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 biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

For SWHA specifically, CDFW recommends Caltrans require focused surveys for active nests and ½-mile no-disturbance buffers around any active nests until the young have fledged and are no longer reliant upon the nest or parental care for survival. If this the ½-mile no-disturbance buffer is not feasible, CDFW recommends Caltrans propose obtaining take authorization through the acquisition of an Incidental Take Permit pursuant to Section 2081(b) of Fish and Game Code in the revised IS, and that the revised IS support a Mitigated Negative Declaration. In summary, if the edited avoidance measure is not feasible, mitigation (take authorization) would be warranted to reduce to less-than-significant the unavoidable Project-related impacts to SWHA.

**//Caltrans Response to Comment 3 (Recommended Edits to Migratory Bird Avoidance and Minimization Measures):** A qualified Caltrans biologist will conduct migratory bird pre-activity surveys for active nests no more than 10 days prior to the start of ground disturbance. Pre-construction surveys for Swainson’s hawks will be conducted within ½-mile of the site. If migratory birds are found nesting within the project limits, Caltrans proposes to implement a 500-foot buffer for raptors including Swainson’s hawks and a 100-foot buffer for any other migratory bird. At this time, Caltrans is not

anticipating take of Swainson's hawks and, therefore, does not propose to acquire a Section 2081 incidental take permit.//

#### **COMMENT 4: Tipton Kangaroo Rat (TKR)**

Issue: TKR are known to occur in the general vicinity of the Project site. While much of the land on both sides of the Project site exists as irrigated agriculture, rural residential, and even urban development, there are discreet areas adjoining the Project site which persist as ruderal grassland habitat. CDFW recommends that Caltrans conduct an assessment of these ruderal habitat areas for potentially suitable TKR habitat. If suitable TKR habitat exists in areas of planned Project-related ground disturbance, equipment staging, or materials laydown, burrows in these areas would have to be completely avoided by a minimum of 50 feet in order to reduce to less than significant the Project-related impacts to the species, and possible take of the species.

**//Caltrans Response to Comment 4:** The closest California Natural Diversity Database documented occurrence is 4 miles from the project site from 1999. The next closest occurrence is over 6 miles from the site from 1911 and on the other side of the Kern River. Most of the project site is within the developed portion of eastern Bakersfield; only a small section in the north end of the site contains non-native grasslands. However, no tail drag or other sign of potential kangaroo rats was observed during surveys.//

**Specific Impacts:** In the IS, Caltrans does not address the possible presence or Project-related impacts to TKR. Without a determination with respect to the presence or absence of even marginal TKR habitat at or adjoining the Project site, CDFW cannot concur that the Project-related impacts to the species are less-than- significant. TKR spend much of their time underground in burrows which extend as far as 50 feet from a burrow opening and unless those burrow openings are avoided by 50 feet, Project-related ground disturbance can result in take of the species through burrow chamber collapse, entrapment, etc.

**Evidence impact would be significant:** Habitat loss resulting from agricultural conversion and development is the primary threat to TKR. TKR are known to occur in ruderal habitat areas which continue to have connectivity to portions of the north end and the south end of the Project right-of-way. TKR could continue to occupy ruderal habitat areas within and adjoining these portions of the Project right-of-way and Project-related ground disturbance in these areas could result in significant impacts to the species.

**//Caltrans Response to Comment 4 (Evidence impact would be significant):** South of the project site are State Route 58 and train tracks that would pose a significant barrier for any migrating kangaroo rats. The south end of the project site consists mostly of residential home and commercial

properties. No suitable habitat for kangaroo rats is present at the south end of the project site.//

### **Recommended Potentially Feasible Avoidance and Mitigation**

**Measure(s):** Because suitable TKR habitat may be present in the vicinity of at least portions of the Project area, CDFW recommends the following measures be added to ensure that impacts to the species will be less-than-significant and completely avoided. Further, CDFW recommends these measures be made conditions of Project approval.

### **Recommended TKR Avoidance and Minimization Measures for Inclusion into the IS.**

In order to determine if TKR occupy ruderal habitat portions of the right-of-way or adjoining lands, CDFW recommends Caltrans revise the initial study to include plans to assess whether ruderal habitat within or adjoining (within 50 feet) the right-of-way constitute suitable habitat for TKR. If not, this should be addressed in the IS and no further measures would be needed. But if suitable habitat is present at or within 50 feet of the right-of-way, and suitable burrows cannot be avoided by a minimum no-disturbance buffer of 50 feet, CDFW recommends the IS include a measure involving protocol-level trapping surveys in advance of commencing Project activities. If no individuals are detected during these surveys, Caltrans may in fact be able to accomplish the Project avoiding significant impacts to the species. However, if TKR are found to occupy ruderal areas at or within 50 feet of the Project right-of-way, the Project would have the potential to result in significant impacts to the species unless burrow openings could be avoided by 50 feet. If this avoidance is not feasible, CDFW recommends Caltrans propose obtaining incidental take coverage pursuant to Section 2081(b) of Fish and Game Code in the revised IS. In summary, if the added avoidance measures for TKR are not feasible, acquisition of an Incidental Take Permit may be warranted to reduce to less-than-significant the unavoidable Project-related impacts to TKR.

**//Caltrans Response to Comment 4 (Recommended TKR Avoidance and Minimization Measures):** Only the north end of the project site contains non-native grasslands. However, this area is highly disturbed from ongoing traffic and recent development. Surveys of this area did not find evidence of potential Tipton kangaroo rat occupancy; therefore, this species is not anticipated to occur onsite. Prior to construction, Caltrans will survey this area again to ensure that the conditions remain consistent with the previous evaluation. If at that point, kangaroo rat sign is found, trapping efforts will be conducted to confirm the presence of Tipton kangaroo rats.//

### **COMMENT 5: Blunt-Nosed Leopard Lizard (BNLL)**

Issue: BNLL are known to occur in the general vicinity of the Project site. While much of the land on both sides of the Project site exists as irrigated

agriculture and rural residential and even urban development, there are discreet areas adjoining the Project site which persist as ruderal grassland habitat. Project-related ground disturbance, equipment staging, or materials laydown, burrows in these areas would have to be completely avoided by a minimum of 50 feet in order to reduce to less than significant the Project-related impacts to this species, and possible take of the species.

**Specific Impacts:** BNLL spend much of their time underground in burrows which extend as far as 50 feet from a burrow opening and unless those burrow openings are avoided by 50 feet, Project-related ground disturbance can result in take of the species through burrow chamber collapse, entrapment, etc. In the IS, Caltrans indicates that “preconstruction surveys within the project area” will be conducted to detect any presence of sign of BNLL and that USFWS will be consulted in the event sign or individual BNLLs are detected. Further, Caltrans proposes requiring low speed limits within the Project site to lessen the likelihood of take of the species resulting from vehicle strikes.

**Evidence impact would be significant:** Habitat loss resulting from agricultural conversion and development is the primary threat to BNLL. BNLL are known to have occurred in ruderal habitat areas which continue to have connectivity to portions of the Project right-of-way. BNLL could continue to occupy ruderal habitat areas within and adjoining these portions of the Project right-of-way and Project-related ground disturbance in these areas could result in significant impacts to the species.

### **Recommended Potentially Feasible Avoidance and Mitigation**

**Measure(s):** Because BNLL may not be detected through “preconstruction surveys”, and because BNLL may inhabit burrows evidenced by burrow openings located outside the Project site, CDFW recommends the BNLL avoidance and minimization measure in the IS be edited to ensure that impacts to the species will be less-than-significant and completely avoided. Further, CDFW recommends these measures be made conditions of Project approval.

### **Recommended Edits to Avoidance and Minimization Measures BNLL on page 12 of the IS.**

In order to determine if BNLL occupy ruderal habitat portions of the right-of-way or adjoining lands, CDFW recommends Caltrans revise the IS to include plans to conduct protocol-level surveys in accordance with the “Approved Survey Methodology for the Blunt-nosed Leopard Lizard” (CDFW revised 2019) to assess the presence of the species at and near the Project site. If no individuals are detected during these surveys, Caltrans may in fact be able to accomplish the Project avoiding the species and significant impacts to the species.

However, if BNLL are found to occupy ruderal habitat areas at or within 50 feet of the Project right-of-way, the Project would have the potential to result in significant impacts to the species unless burrow openings could be avoided by 50 feet. CDFW cannot issue incidental take coverage pursuant to Section 2081(b) of Fish and Game Code for Project-related take of BNLL due to its fully protected status. Therefore, take of the species must be completely avoided and we advise including measures for full species avoidance in the IS.

**//Caltrans Response to Comment 5 (Recommended Edits to Avoidance and Minimization Measures):** Caltrans proposes to conduct protocol-level preconstruction surveys following the methodologies outlined in the “Approved Survey Methodology for the Blunt-nosed Leopard Lizard” (CDFW revised 2019). If blunt-nosed leopard lizards are found during preconstruction surveys, Caltrans will coordinate with the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service to determine avoidance measures.//

## **II. Editorial Comments and/or Suggestions**

Appropriateness of ND: The above recommended revisions to the IS pertain to avoidance of SJKF and their dens, nesting SWHA, and burrows which may harbor TKR and/or BNLL at and within specified buffers from the Project right-of-way to completely avoid significant impacts to these State-listed species under this Negative Declaration. If surveys confirm the presence of any of the aforementioned species at or within the species-specific buffers, Caltrans may not be able to accomplish the Project avoiding significant impacts to these species without first obtaining incidental take authorization pursuant to Section 2081(b) of Fish and Game Code. Incidental take authorization would involve minimization of, and mitigation for, take of the permitted species.

Considering this, CDFW recommends Caltrans incorporate the recommended revisions to the IS and propose a Mitigated Negative Declaration for the Project, in lieu of the currently proposed ND. This will ensure that the CDFW recommended avoidance, minimization, and mitigation measures will be quantifiable and enforceable.

## **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](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link:  
<https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## **FILING FEES**

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CDFW appreciates the opportunity to comment on the Project to assist Caltrans in identifying and avoiding the Project's impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). If you have any questions, please contact Jim Vang, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014, extension 254, or by electronic mail at [Jim.Vang@wildlife.ca.gov](mailto:Jim.Vang@wildlife.ca.gov).

Sincerely,

Julie A. Vance

Regional Manager

Attachment 1: Recommended Mitigation Monitoring and Reporting Program  
cc: United States Fish and Wildlife Service

2800 Cottage Way, Suite W-2605 Sacramento, California 95825

ec: Office of Planning and Research, State Clearinghouse  
[state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov)

Jim Vang, California Department of Fish and Wildlife

Literature Cited:

CDFW. 2016. Five Year Status Review for Swainson's Hawk (*Buteo swainsoni*).

California Department of Fish and Wildlife. April 11, 2016.

Cypher, B. L., S. E. Phillips, and P. A. Kelly. 2013. Quantity and distribution of suitable habitat for endangered San Joaquin kit foxes: conservation implications. *Canid Biology and Conservation* 16(7): 25–31.

Attachment 1:

Recommended Mitigation Monitoring and Reporting Program

**Attachment 1**

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

**PROJECT: Morning Drive 3R Rehabilitation Project SCH No.:  
2020059032**

[//Caltrans Note: Double slashes in the table below indicate elements that were added to the original table to meet Americans with Disabilities Act compliance for publishing documents on the internet.//]

<b>RECOMMENDED MITIGATION MEASURE</b>	<b>STATUS/DATE/INITIALS</b>
<i>Before Disturbing Soil or Vegetation</i>	//left blank//
Mitigation Measure 1: SJKF Avoidance	//left blank//
Mitigation Measure 2: SJKF Take Authorization (if avoidance is not feasible)	//left blank//
Mitigation Measure 3: SWHA Avoidance	//left blank//
Mitigation Measure 4: SWHA Take Authorization (if avoidance is not feasible)	//left blank//
Mitigation Measure 5: TKR Avoidance	//left blank//
Mitigation Measure 6: TKR Take Authorization (if avoidance is not feasible)	//left blank//
Mitigation Measure 7: BNLL Avoidance	//left blank//
<i>During Soil or Vegetation Disturbance</i>	//left blank//
Mitigation Measure 8: BNLL Avoidance	//left blank//

## **Comment Letter B: Native American Heritage Commission**

June 2, 2020

Som Phongsavanh

California Department of Transportation 855 M Street, Suite 200  
Fresno, CA 93721

### **Re: 2020059032 Morning Drive 3R Rehabilitation (06-0U430), Kern County**

Dear Ms. Phongsavanh:

The Native American Heritage Commission (NAHC) has reviewed the Draft Environmental Impact Report (DEIR)/Mitigated Negative Declaration (MND) or Negative Declaration prepared for the project referenced above. The review may have included the Cultural Resources Section, Archaeological Report, Appendices for Cultural Resources Compliance, as well as other informational materials. We have the following concerns:

**Comment 1:** There is no information in the documents of any contact or consultation with all traditionally, culturally affiliated California Native American Tribes from the NAHC's contact list.

**//Caltrans Response to Comment 1:** An email was sent to the Native American Heritage Commission (NAHC) requesting a search of the commission's Traditional Cultural Property database and a list of Native American groups and individuals that have an interest in the project area. On October 3, 2018, a letter was received from Sharaya Souza of the Native American Heritage Commission staff. A search of the Native American Heritage Commission's database found no resources in its Sacred Lands File. A list of groups and individuals that the Native American Heritage Commission had identified as interested in the project area was provided (Historic Property Survey Report 2020).

The following individuals who have, in the past, been interested in the geographic area where the project is located, were contacted regarding the project. No comments have been received to date from the parties listed below:

- 1) Robert Robinson, Chairperson of the Kern Valley Indian Community
- 2) Octavio Escobedo, Chairperson of the Tejon Indian Tribe
- 3) Ruban Barrios, Chairperson of the Santa Rosa Rancheria
- 4) Senior Cultural Specialist of the Santa Rosa Rancheria
- 5) Kerri Vera, Environmental Department of the Tule River Indian Tribe
- 6) Neil Peyron, Chairperson of the Tule River Indian Tribe

Since the initial contact of the above individuals, the Native American Heritage Commission has provided a longer list of individuals and groups that it feels should be contacted. In 2018, the following individuals were contacted and provided information about the project. No comments have been received to date from the parties listed below:

- 1) Genevieve Jones, Chairperson of the Big Pine Paiute Tribe of the Owens Valley
- 2) Danelle Gutierrez, Tribal Historic Preservation Officer of Big Pine Paiute Tribe of the Owens Valley
- 3) Julio Quair, Chairperson of the Chumash Council of Bakersfield
- 4) Julie Turner, Secretary of the Kern Valley Indian Community
- 5) Delia Dominguez, Chairperson of the Kitanemuk and Yowlumne Tejon Indians
- 6) Lee Clauss, Director-CRM Department of the San Manuel Band of Mission Indians
- 7) Robert L. Gomez, Jr., Tribal Chairperson of the Tubatulabals of Kern Valley
- 8) Kenneth Woodrow, Chairperson of the Wuksache Indian Tribe/Eshom Valley Band//

The California Environmental Quality Act (CEQA), specifically Public Resources Code section 21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource is a project that may have a significant effect on the environment. If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an environmental impact report (EIR) shall be prepared.

**Comment 2:** In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources with the area of project effect (APE).

**//Caltrans Response to Comment 2:** No historical resources or historic properties were identified within the project area as a result of the above noted efforts. Small intermittent portions of the Area of Potential Effects had been previously surveyed. Caltrans' Professionally Qualified Staff (PQS) has determined there are no historical resources present, as outlined in CEQA Guidelines 15064.5(a). Please refer to Section 2, Cultural Resources, where there were no impacts identified within the Area of Potential Effects.//

**Comment 3:** CEQA was amended in 2014 by Assembly Bill 52 (AB 52). 4 AB 52 applies to any project for which a notice of preparation or a notice of negative declaration or mitigated negative declaration is filed on or after July 1, 2015. AB 52 created a separate category for "tribal cultural resources", that

now includes "a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. Your project may also be subject to Senate Bill 18 (SB 18) (Burton, Chapter 905, Statutes of 2004), Government Code 65352.3, if it also involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space. Both SB 18 and AB 52 have tribal consultation requirements. Additionally, if your project is also subject to the federal National Environmental Policy Act (42 U.S.C. A§ 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1968 may also apply. Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.

**//Caltrans Response to Comment 3:** The project complies with AB 52. The project is not subject to SB 18. Identification efforts, including pedestrian survey, records search, and other research, resulted in no significant cultural resources being identified within the project area. No Native American resources were found within or close to the project area as a result of research and pedestrian survey. The studies for this project were carried out in a manner consistent with Caltrans' regulatory responsibilities under Section 106 of the National Historic Preservation Act (36 Code of Federal Regulation Part 800) and pursuant to the January 2014 First Amended Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and the California Department of Transportation Regarding Compliance with Section 106 of the National Historic Preservation Act (Section 106 PA).//

**Comment 4:** Agencies should be aware that AB 52 does not preclude agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52. For that reason, we urge you to continue to request Native American Tribal Contact Lists and Sacred Lands File searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>. Additional information regarding AB 52 can be found online at: <http://nahc.ca.gov/wpcontent/uploads/2015/10/AB52TribalConsultationCalEPAPDF.pdf>, entitled "Tribal Consultation Under AB 52: Requirements and Best Practices".

**//Caltrans Response to Comment 4:** A search of the Native American Heritage Commission's database found no resources in the commission's Sacred Lands File. A list of groups and individuals that the Native American Heritage Commission had identified as interested in the project area was

provided (refer to Caltrans response to Comment 1). The Caltrans District 6 Native American Coordinator, Mandy Macias, may do additional consultation with interested Native American individuals and groups, if deemed necessary.//

**Comment 5:** The NAHC recommends lead agencies consult with all California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources.

**//Caltrans Response to Comment 5:** Caltrans performs consultation with California Native American tribes at the start of the environmental studies phase of the project prior to the circulation of the draft environmental document. Please refer to the consultation history under Comment 1 for more detailed information.//

A brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments is also attached.

If you have any questions or need additional information, please contact me at my email address: [Nancy.Gonzalez-Lopez@nahcca.gov](mailto:Nancy.Gonzalez-Lopez@nahcca.gov).

Sincerely,

Nancy Gonzalez-Lopez  
Cultural Resources Analyst  
Attachment

cc: State Clearinghouse

**Pertinent Statutory Information:**

Under AB 52:

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice. A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project .4 and prior to the release of a negative declaration, mitigated negative declaration or

environmental impact report. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code § 65352.4 (SB 18).

The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:

- 1) Alternatives to the project
- 2) Recommended mitigation measures
- 3) Significant effects

The following topics are discretionary topics of consultation:

- 1) Type of environmental review necessary
- 2) Significance of the tribal cultural resources
- 3) Significance of the project's impacts on tribal cultural resources

If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency.

With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code sections 6254 (r) and 6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public.

If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:

- a) Whether the proposed project has a significant impact on an identified tribal cultural resource.
- b) Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code section 21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource.

Consultation with a tribe shall be considered concluded when either of the following occurs:

- a) The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
- b) A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached.

Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code section 21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code section 21082.3, subdivision (b), paragraph 2, and shall be fully enforceable.

If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code section 21084.3 (b).

An environmental impact report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:

- a) The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code sections 21080.3.1 and 21080.3.2 and concluded pursuant to Public Resources Code section 21080.3.2.
- b) The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
- c) The lead agency provided notice of the project to the tribe in compliance with Public Resources Code section 21080.3.1 (d) and the tribe failed to request consultation within 30 days.

This process should be documented in the Tribal Cultural Resources section of your environmental document.

Under SB 18:

Government Code § 65352 .3 (a) (1) requires consultation with Native Americans on general plan proposals for the purposes of "preserving or mitigating impacts to places, features, and objects described§ 5097.9 and§ 5091.993 of the Public Resources Code that are located within the city or county's jurisdiction. Government Code § 65560 (a), (b), and (c) provides for consultation with Native American tribes on the open-space element of a



county or city general plan for the purposes of protecting places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code.

- 1) SB 18 applies to local governments and requires them to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at:  
[https://www.opr.ca.gov/docs/09\\_14\\_05\\_Updated\\_Guidelines\\_922.pdf](https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf)
- 2) **Tribal Consultation:** If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.
- 3) There is no Statutory Time Limit on Tribal Consultation under the law.
- 4) **Confidentiality:** Consistent with the guidelines developed and adopted by the Office of Planning and Research, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code sections 5097.9 and 5097.993 that are within the city's or county's jurisdiction.
- 5) **Conclusion Tribal Consultation:** Consultation should be concluded at the point in which:
  - The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
  - Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation.

#### **NAHC Recommendations for Cultural Resources Assessments:**

Contact the NAHC for:

- 1) A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they

required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.

- 2) A Native American Tribal Contact List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.
  - The request form can be found at <http://nahc.ca.gov/resources/forms/>.
- 3) Contact the appropriate regional California Historical Research Information System (CHRIS) Center (<http://ohp.parks.ca.gov/?pageid=1068>) for an archaeological records search. The records search will determine:
  - a. If part or the entire APE has been previously surveyed for cultural resources.
  - b. If any known cultural resources have been already been recorded on or adjacent to the APE.
  - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
  - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
  - e. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
  - f. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
- 4) The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

**Examples of Mitigation Measures That May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:**

- 1) Avoidance and preservation of the resources in place, including, but not limited to:

- Planning and construction to avoid the resources and protect the cultural and natural context.
  - Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
- 2) Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to the following:
    - Protecting the cultural character and integrity of the resource.
    - Protecting the traditional use of the resource.
    - Protecting the confidentiality of the resource.
  - 3) Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
  - 4) Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed.
  - 5) Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated.

The lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.

- Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources. 20 In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
- Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
- Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of

inadvertently discovered Native American human remains. Health and Safety Code section 7050.5, Public Resources Code section 5097.98, and Cal. Code Regs., tit. 14, section 15064.5, subdivisions (d) and (e) (CEQA Guidelines section 15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

## **Comment Letter C: Department of Toxic Substances Control**

June 5, 2020

Mr. Som Phongsavanh, Caltrans  
855 M Street, Suite 200  
Fresno, California 93721 Som.Phongsavanh@dot.ca.gov

### **NEGATIVE DECLARATION FOR MORNING DRIVE 3R REHABILITATION (06-0U430) – DATED MAY 2020 (STATE CLEARINGHOUSE NUMBER: 2020059032)**

Dear Ms. Phongsavanh:

The Department of Toxic Substances Control (DTSC) received a Negative Declaration (ND) for Morning Drive 3R Rehabilitation (06-0U430). The California Department of Transportation (Caltrans) proposes to rehabilitate and bring to current standards the existing roadway on State Route 184, in Kern County, between 0.1 mile north of Edison-Highway at post mile 8.5 and 0.1 mile north of Chase Avenue at post mile 11 .6. Complete Streets elements would be incorporated, including Americans with Disabilities Act compliant sidewalks, curb ramps, and continuous bike lanes in both directions, within the project limits.

DTSC recommends that the following issues be evaluated in the ND Hazards and Hazardous Materials section:

1. The ND should acknowledge the potential for historic or future activities on or near the project site to result in the release of hazardous wastes/substances on the project site. In instances in which releases have occurred or may occur, further studies should be carried out to delineate the nature and extent of the contamination, and the potential threat to public health and/or the environment should be evaluated. The ND should also identify the mechanism(s) to initiate any required investigation and/or remediation and the government agency who will be responsible for providing appropriate regulatory oversight.

**//Caltrans Response to Comment 1:** The historic use of leaded gasoline emissions settling on surface soils next to the roadway is a potential hazardous waste issue. Lead levels have been studied, and proper disposal and handling measures will be addressed in the contract special provisions. There are no other historic or future activities on or near the project site that would result in the release of hazardous waste/substances on the project site. For this project, construction activities will occur mostly within existing right-of-way. However, new right-of-way, temporary construction easements, and utility relocation are required. Modifying bridges or other structures

are not anticipated. Based on the Preliminary Site Investigation results, construction excavation depth is estimated to be less than 1 foot. Tanks, piping, or potential soil contamination would not likely be encountered at such a shallow depth. Should staining and/or odors be encountered during construction, special management and handling may be required. Also, Kern County Health Department would need to be notified.//

2. Refiners in the United States started adding lead compounds to gasoline in the 1920s in order to boost octane levels and improve engine performance. This practice did not officially end until 1992 when lead was banned as a fuel additive in California. Tailpipe emissions from automobiles using leaded gasoline contained lead and resulted in aurally deposited lead (ADL) being deposited and printed on recycled paper and along roadways throughout the state. ADL-contaminated soils still exist along roadsides and medians and can also be found underneath some existing road surfaces due to past construction activities. Due to the potential for ADL-contaminated soil, DTSC, recommends collecting soil samples for lead analysis prior to performing any intrusive activities for the project described in the ND.

**//Caltrans Response to Comment 2:** A Preliminary Site Investigation addressing aurally deposited lead (ADL) was conducted in April 2020. Twenty-eight boreholes were drilled next to the highway. Samples were taken from each borehole at the following depth intervals: surface to 1.0 foot, 1.0–2.0 feet, and 2.0–3.0 feet below ground surface. A total of 80 samples were collected. Four samples could not be obtained due to soil refusal. Soil containing brick, glass, and other debris was encountered while sampling two borehole locations near Hillcrest Memorial Park. The debris likely contributed to the elevated total and soluble lead values. These two hotspot locations exhibit characteristics of both California non- Resource Conservation and Recovery Act and federal Resource Conservation and Recovery Act hazardous waste. The two hotspot locations would be excavated and handled separately. Soil from these areas (0.0 - 3.0 feet) would be a California non- Resource Conservation and Recovery Act and a federal Resource Conservation and Recovery Act hazardous waste requiring disposal at a Class I landfill. //

3. If any sites within the project area or sites located within the vicinity of the project have been used or are suspected of having been used for mining activities, proper investigation for mine waste should be discussed in the ND. DTSC recommends that any project sites with current and/or former mining operations onsite or in the project site area should be evaluated for mine waste according to

DTSC's 1998 Abandoned Mine Land Mines Preliminary Assessment Handbook ([https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/11/aml\\_handbook.pdf](https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/11/aml_handbook.pdf)).

**//Caltrans Response to Comment 3:** According to the Department of Conservation's mapping database, naturally occurring asbestos or other hazardous minerals are not expected to be found in the project area. There are no active or abandoned mining activities/operations within the project area.//

4. If buildings or other structures are to be demolished on any project sites included in the proposed project, surveys should be conducted for the presence of lead-based paints or products, mercury, asbestos containing materials, and polychlorinated biphenyl caulk. Removal, demolition and disposal of any of the above-mentioned chemicals should be conducted in compliance with California environmental regulations and policies. In addition, sampling near current and/or former buildings should be conducted in accordance with DTSC's 2006 Interim Guidance Evaluation of School Sites with Potential Contamination from Lead Based Paint, Termiticides, and Electrical Transformers ([https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/09/Guidance\\_Lead\\_Contamination\\_050118.pdf](https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/09/Guidance_Lead_Contamination_050118.pdf)).

**//Caltrans Response to Comment 4:** No buildings or structures will be demolished within the project area.//

5. If any projects initiated as part of the proposed project require the importation of soil to backfill any excavated areas, proper sampling should be conducted to ensure that the imported soil is free of contamination. DTSC recommends the imported materials be characterized according to DTSC's 2001 Information Advisory Clean Imported Fill Material ([https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/09/SMP\\_FS\\_Cleanfill-Schools.pdf](https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/09/SMP_FS_Cleanfill-Schools.pdf)).

**//Caltrans Response to Comment 5:** There will be work off the paved shoulder adjacent to State Route 184, and excess soil will be generated requiring relinquishment or disposal; however, the importation of fill material is not anticipated. Soil along the shoulders of State Route 184 is at a depth of 0.0 to 3.0 feet, not including the hotspot locations, and would be considered non-regulated/non-hazardous and could be reused on-site, relinquished to the contractor, or disposed of without restrictions with regard to the lead content. Two hotspot locations would be excavated and handled separately. Please refer to Caltrans' response to comment 2 for more information on handling the waste from the two hotspot locations. //

6. If any sites included as part of the proposed project have been used for agricultural, weed abatement or related activities, proper investigation for organochlorinated pesticides should be discussed in the ND. DTSC recommends the current and former agricultural lands be evaluated in accordance with DTSC's 2008 Interim Guidance for Sampling Agricultural Properties (Third Revision) (<https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/09/Ag-Guidance-Rev-3-August-7-2008-2.pdf>).

**//Caltrans Response to Comment 6:** There is little to no agricultural land within the project boundaries. Residual organochlorine pesticides are not likely present in shallow soils that would be of concern or exceed regulatory health-based screening thresholds for commercial/industrial land use.//

DTSC appreciates the opportunity to comment on the ND. Should you need any assistance with an environmental investigation, please submit a request for Lead Agency Oversight Application, which can be found at: [https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/09/VCP\\_App-1460.doc](https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/09/VCP_App-1460.doc). Additional information regarding voluntary agreements with DTSC can be found at: <https://dtsc.ca.gov/brownfields/>.

If you have any questions, please contact me at (916) 255-3710 or via email at [Gavin.McCreary@dtsc.ca.gov](mailto:Gavin.McCreary@dtsc.ca.gov).

Sincerely,

Gavin McCreary Project Manager  
Site Evaluation and Remediation Unit Site Mitigation and Restoration  
Program Department of Toxic Substances Control

cc: (via email)

Governor's Office of Planning and Research State Clearinghouse  
[State.Clearinghouse@opr.ca.gov](mailto:State.Clearinghouse@opr.ca.gov)

Ms. Lora Jameson, Chief  
Site Evaluation and Remediation Unit Department of Toxic Substances  
Control [Lora.Jameson@dtsc.ca.gov](mailto:Lora.Jameson@dtsc.ca.gov)

Mr. Dave Kereazis  
Office of Planning & Environmental Analysis Department of Toxic Substances  
Control [Dave.Kereazis@dtsc.ca.gov](mailto:Dave.Kereazis@dtsc.ca.gov)



## **Appendix C** U.S. Fish and Wildlife Service Species List, California Native Plant Society Species List, and California Natural Diversity Database Query

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This appendix contains species lists obtained from resource agencies.



## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Sacramento Fish And Wildlife Office  
Federal Building  
2800 Cottage Way, Room W-2605  
Sacramento, CA 95825-1846  
Phone: (916) 414-6600 Fax: (916) 414-6713



In Reply Refer To:  
Consultation Code: 08ESMF00-2020-SLI-0189  
Event Code: 08ESMF00-2020-E-07768  
Project Name: 06-0U430 Morning Drive 3R Rehab

August 03, 2020

Subject: Updated list of threatened and endangered species that may occur in your proposed project location, and/or may be affected by your proposed project

### To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, under the jurisdiction of the U.S. Fish and Wildlife Service (Service) that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the Service under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Please follow the link below to see if your proposed project has the potential to affect other species or their habitats under the jurisdiction of the National Marine Fisheries Service:

[http://www.nwr.noaa.gov/protected\\_species/species\\_list/species\\_lists.html](http://www.nwr.noaa.gov/protected_species/species_list/species_lists.html)

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2) (c)). For projects other than major construction activities, the Service suggests that a biological evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at:

<http://www.fws.gov/endangered/esa-library/pdf/TOC-GLOS.PDF>

Please be aware that bald and golden eagles are protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668 *et seq.*), and projects affecting these species may require development of an eagle conservation plan ([http://www.fws.gov/windenergy/eagle\\_guidance.html](http://www.fws.gov/windenergy/eagle_guidance.html)). Additionally, wind energy projects should follow the wind energy guidelines (<http://www.fws.gov/windenergy/>) for minimizing impacts to migratory birds and bats.

Guidance for minimizing impacts to migratory birds for projects including communications towers (e.g., cellular, digital television, radio, and emergency broadcast) can be found at: <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/towers.htm>; <http://www.towerkill.com>; and <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/comtow.html>.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Tracking Number in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

**Attachment(s):**

- Official Species List

## Official Species List

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

**Sacramento Fish And Wildlife Office**  
Federal Building  
2800 Cottage Way, Room W-2605  
Sacramento, CA 95825-1846  
(916) 414-6600

## Project Summary

Consultation Code: 08ESMF00-2020-SLI-0189

Event Code: 08ESMF00-2020-E-07768

Project Name: 06-0U430 Morning Drive 3R Rehab

Project Type: TRANSPORTATION

Project Description: Rehabilitating SR 184 between PM 8.04 and 11.8 with cold plane and overlay with HMA. Shoulder widening to 8 feet and shoulder backing. All existing non-ADA compliant curb ramps will be made ADA compliant. Sidewalks will be repaired where needed within project area.

**Project Location:**

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/35.37632733454056N118.91232036035801W>



Counties: Kern, CA

## Endangered Species Act Species

There is a total of 11 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries<sup>1</sup>, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

- 
1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

### Mammals

NAME	STATUS
San Joaquin Kit Fox <i>Vulpes macrotis mutica</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/2873">https://ecos.fws.gov/ecp/species/2873</a>	Endangered
Tipton Kangaroo Rat <i>Dipodomys nitratoide nitratoide</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/7247">https://ecos.fws.gov/ecp/species/7247</a> Species survey guidelines: <a href="https://ecos.fws.gov/ipac/guideline/survey/population/40/office/11420.pdf">https://ecos.fws.gov/ipac/guideline/survey/population/40/office/11420.pdf</a>	Endangered

### Birds

NAME	STATUS
Southwestern Willow Flycatcher <i>Empidonax traillii extimus</i> There is <b>final</b> critical habitat for this species. Your location is outside the critical habitat. Species profile: <a href="https://ecos.fws.gov/ecp/species/6749">https://ecos.fws.gov/ecp/species/6749</a>	Endangered

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## Reptiles

NAME	STATUS
<b>Blunt-nosed Leopard Lizard</b> <i>Gambelia silus</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/625">https://ecos.fws.gov/ecp/species/625</a>	Endangered
<b>Giant Garter Snake</b> <i>Thamnophis gigas</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/4482">https://ecos.fws.gov/ecp/species/4482</a>	Threatened

## Amphibians

NAME	STATUS
<b>California Red-legged Frog</b> <i>Rana draytonii</i> There is <b>final</b> critical habitat for this species. Your location is outside the critical habitat. Species profile: <a href="https://ecos.fws.gov/ecp/species/2891">https://ecos.fws.gov/ecp/species/2891</a> Species survey guidelines: <a href="https://ecos.fws.gov/ipac/guideline/survey/population/205/office/11420.pdf">https://ecos.fws.gov/ipac/guideline/survey/population/205/office/11420.pdf</a>	Threatened

## Fishes

NAME	STATUS
<b>Delta Smelt</b> <i>Hypomesus transpacificus</i> There is <b>final</b> critical habitat for this species. Your location is outside the critical habitat. Species profile: <a href="https://ecos.fws.gov/ecp/species/321">https://ecos.fws.gov/ecp/species/321</a>	Threatened

## Crustaceans

NAME	STATUS
<b>Vernal Pool Fairy Shrimp</b> <i>Branchinecta lynchi</i> There is <b>final</b> critical habitat for this species. Your location is outside the critical habitat. Species profile: <a href="https://ecos.fws.gov/ecp/species/498">https://ecos.fws.gov/ecp/species/498</a>	Threatened



**Flowering Plants**

NAME	STATUS
<b>Bakersfield Cactus</b> <i>Opuntia treleasei</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/7799">https://ecos.fws.gov/ecp/species/7799</a>	Endangered
<b>California Jewelflower</b> <i>Caulanthus californicus</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/4599">https://ecos.fws.gov/ecp/species/4599</a>	Endangered
<b>San Joaquin Woolly-threads</b> <i>Monolopia (=Lembertia) condonii</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/3746">https://ecos.fws.gov/ecp/species/3746</a>	Endangered

**Critical habitats**

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

\*The database used to provide updates to the Online Inventory is under construction. [View updates and changes made since May 2019 here.](#)

## Plant List

20 matches found. [Click on scientific name for details](#)

### Search Criteria

Found in Quads 3511848, 3511838, 3511847 and 3511837; Elevation is above 0 or below 600 feet

[Modify Search Criteria](#) [Export to Excel](#) [Modify Columns](#) [Modify Sort](#) [Display Photos](#)

Scientific Name	Common Name	Family	Lifeform	Blooming Period	CA Rare Plant Rank	State Rank	Global Rank
<a href="#">Allium howellii</a> <a href="#">var. howellii</a>	Howell's onion	Alliaceae	perennial bulbiferous herb	Mar-Apr	4.3	S3	G3G4T3
<a href="#">Astragalus homii</a> <a href="#">var. homii</a>	Horn's milk-vetch	Fabaceae	annual herb	May-Oct	1B.1	S1	G4G5T1T2
<a href="#">Atriplex tularensis</a>	Bakersfield smallscale	Chenopodiaceae	annual herb	Jun-Oct	1A	SX	GX
<a href="#">Azolla microphylla</a>	Mexican mosquito fern	Azollaceae	annual / perennial herb	Aug	4.2	S4	G5
<a href="#">Caulanthus californicus</a>	California jewelflower	Brassicaceae	annual herb	Feb-May	1B.1	S1	G1
<a href="#">Chloropovron molle</a> ssp. <a href="#">hispidum</a>	hispid bird's-beak	Orobanchaceae	annual herb (hemiparasitic)	Jun-Sep	1B.1	S1	G2T1
<a href="#">Clarkia exilis</a>	slender clarkia	Onagraceae	annual herb	Apr-May	4.3	S3	G3
<a href="#">Diplacus pictus</a>	calico monkeyflower	Phrymaceae	annual herb	Mar-May	1B.2	S2	G2
<a href="#">Eremalche pamyi</a> ssp. <a href="#">kemensis</a>	Kern mallow	Malvaceae	annual herb	Jan,Mar,Apr,May(Feb)	1B.2	S3	G3G4T3
<a href="#">Eriastrum hooveri</a>	Hoover's eriastrum	Polemoniaceae	annual herb	(Feb)Mar-Jul	4.2	S3	G3
<a href="#">Eschscholzia lemmonii</a> ssp. <a href="#">kemensis</a>	Tejon poppy	Papaveraceae	annual herb	(Feb)Mar-May	1B.1	S2	G5T2

<a href="#"><u>Fritillaria striata</u></a>	striped adobe-lily	Liliaceae	perennial bulbiferous herb	Feb-Apr	1B.1	S1	G1
<a href="#"><u>Layia leucopappa</u></a>	Comanche Point layia	Asteraceae	annual herb	(Feb)Mar-Apr	1B.1	S1	G1
<a href="#"><u>Microseris sylvatica</u></a>	sylvan microseris	Asteraceae	perennial herb	Mar-Jun	4.2	S4	G4
<a href="#"><u>Monolopia congdonii</u></a>	San Joaquin woollythreads	Asteraceae	annual herb	(Jan)Feb-May	1B.2	S2	G2
<a href="#"><u>Opuntia basilaris var. treleasei</u></a>	Bakersfield cactus	Cactaceae	perennial stem succulent	Apr-May	1B.1	S1	G5T1
<a href="#"><u>Pseudobahia peirsonii</u></a>	San Joaquin adobe sunburst	Asteraceae	annual herb	Feb-Apr	1B.1	S1	G1
<a href="#"><u>Stylocline citroleum</u></a>	oil neststraw	Asteraceae	annual herb	Mar-Apr	1B.1	S3	G3
<a href="#"><u>Tortula californica</u></a>	California screw-moss	Pottiaceae	moss		1B.2	S2S3	G2G3
<a href="#"><u>Trichostema ovatum</u></a>	San Joaquin bluecurls	Lamiaceae	annual herb	Jul-Oct	4.2	S3	G3

#### Suggested Citation

California Native Plant Society, Rare Plant Program. 2020. Inventory of Rare and Endangered Plants of California (online edition, v8-03 0.39). Website <http://www.rareplants.cnps.org> [accessed 03 August 2020].

#### Search the Inventory

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#### Contributors

[The Calflora Database](#)

[The California Lichen Society](#)

[California Natural Diversity Database](#)

[The Jepson Flora Project](#)

[The Consortium of California Herbaria](#)

[CalPhotos](#)

#### Questions and Comments

[rareplants@cnps.org](mailto:rareplants@cnps.org)

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CALIFORNIA DEPARTMENT OF  
**FISH and WILDLIFE** *RareFind*

Query Summary:  
Quad IS (Lamont(3511836) OR Oil Center(3511848))  
AND Elevation IS greater than OR equal to 0  
AND Elevation IS less than OR equal to 600

[Print](#) [Close](#)

CNDDB Element Query Results

Scientific Name	Common Name	Taxonomic Group	Element Code	Total Occs	Returned Occs	Federal Status	State Status	Global Rank	State Rank	CA Rare Plant Rank	Other Status	Habitats
<i>Ammospermophilus nelsoni</i>	Nelson's antelope squirrel	Mammals	AMAFB04040	285	1	None	Threatened	G2	S2S3	null	BLM_S-Sensitive, IUCN_EN-Endangered	Chenopod scrub
<i>Arizona elegans occidentalis</i>	California glossy snake	Reptiles	ARADB01017	260	1	None	None	G5T2	S2	null	CDFW_SSC-Species of Special Concern	null
<i>Astragalus hornii</i> var. <i>hornii</i>	Horn's milk-vetch	Dicots	PDFAB0F421	28	2	None	None	GUT1	S1	1B.1	BLM_S-Sensitive	Alkali playa, Meadow & seep, Wetland
<i>Athene cunicularia</i>	burrowing owl	Birds	ABN SB10010	1989	11	None	None	G4	S3	null	BLM_S-Sensitive, CDFW_SSC-Species of Special Concern, IUCN_LC-Least Concern, USFWS_BC C-Birds of Conservation Concern	Coastal prairie, Coastal scrub, Great Basin grassland, Great Basin scrub, Mojavean desert scrub, Sonoran desert scrub, Valley & foothill grassland
<i>Atriplex tularensis</i>	Bakersfield smallscale	Dicots	PDCH04240	3	1	None	Endangered	GX	SX	1A	null	Chenopod scrub, Meadow & seep
<i>Bombus crotchii</i>	Crotch bumble bee	Insects	IIHYM24480	276	1	None	Candidate Endangered	G3G4	S1S2	null	null	null
<i>Chloropyron molle</i> ssp. <i>hispidum</i>	hispid Sally birds-beak	Dicots	PDSCROJ001	35	1	None	None	G2T1	S1	1B.1	null	Alkali playa, Meadow & seep, Wetland
<i>Danaus plexippus</i> pop. 1	monarch - California overwintering population	Insects	IILEPP2012	383	4	None	None	G4T2T3	S2S3	null	USFS_S-Sensitive	Closed-cone coniferous forest
<i>Desmocerus californicus dimorphus</i>	valley elderberry longhorn beetle	Insects	IICOL48011	271	1	Threatened	None	G3T2	S2	null	null	Riparian scrub
<i>Dipodomys nitratoideus nitratoideus</i>	Tipton kangaroo rat	Mammals	AMAFD03152	79	1	Endangered	Endangered	G3T1T2	S1S2	null	IUCN_VU-Vulnerable	Chenopod scrub
<i>Emys marmorata</i>	western pond turtle	Reptiles	ARAAD02030	1395	2	None	None	G3G4	S3	null	BLM_S-Sensitive, CDFW_SSC-Species of Special Concern, IUCN_VU-Vulnerable, USFS_S-Sensitive	Aquatic, Artificial flowing waters, Klamath/North coast flowing waters, Klamath/North coast standing waters, Marsh & swamp, Sacramento/San Joaquin flowing waters, Sacramento/San Joaquin standing waters, South coast flowing waters, South coast standing waters, Wetland
<i>Eschscholzia lemmonii</i> ssp. <i>kemensis</i>	Tejon poppy	Dicots	PDPAPOA071	86	1	None	None	G5T2	S2	1B.1	BLM_S-Sensitive, SB_CalBG/RSABG-California/Rancho Santa Ana Botanic Garden, SB_SBBG-Santa Barbara Botanic Garden,	Chenopod scrub, Valley & foothill grassland

											SB_USDA-US Dept of Agriculture	
Eumops perotis californicus	western mastiff bat	Mammals	AMACD02011	296	1	None	None	G5T4	S3S4	null	BLM_S-Sensitive, CDFW_SSC-Species of Special Concern, WSWG_H-High Priority	Chaparral, Cismontane woodland, Coastal scrub, Valley & foothill grassland
Gambelia sila	blunt-nosed leopard lizard	Reptiles	ARACF07010	380	1	Endangered	Endangered	G1	S1	null	CDFW_FP-Fully Protected, IUCN_EN-Endangered	Chenopod scrub
Lytta moesta	moestan blister beetle	Insects	IICOL4C020	12	1	None	None	G2	S2	null	null	Valley & foothill grassland
Lytta morrisoni	Morrison's blister beetle	Insects	IICOL4C040	10	1	None	None	G1G2	S1S2	null	null	Valley & foothill grassland
Monolopia condonii	San Joaquin woollythreads	Dicots	PDASTA8010	111	1	Endangered	None	G2	S2	1B.2	SB_UCBG-UC Botanical Garden at Berkeley	Chenopod scrub, Valley & foothill grassland
Navarretia setiloba	Plute Mountains navarretia	Dicots	PDPLM0C0S0	56	1	None	None	G2	S2	1B.1	BLM_S-Sensitive, USFS_S-Sensitive	Cismontane woodland, Pinon & juniper woodlands, Valley & foothill grassland
Opuntia basilaris var. treleasei	Bakersfield cactus	Dicots	PDCAC0D055	62	11	Endangered	Endangered	G5T1	S1	1B.1	SB_CalBGRSABG-California/Rancho Santa Ana Botanic Garden	Chenopod scrub, Cismontane woodland, Valley & foothill grassland
Tortula californica	California screw moss	Bryophytes	NBMUS7L090	15	1	None	None	G2G3	S2?	1B.2	BLM_S-Sensitive	Chenopod scrub, Valley & foothill grassland
Valley Saltbush Scrub	Valley Saltbush Scrub	Scrub	CTT36220CA	19	1	None	None	G2	S2.1	null	null	Chenopod scrub
Vulpes macrotis mulica	San Joaquin kit fox	Mammals	AMAJA03041	1018	11	Endangered	Threatened	G4T2	S2	null	null	Chenopod scrub, Valley & foothill grassland



# Appendix D U.S. Fish and Wildlife Service Letter of Concurrence

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## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Sacramento Fish and Wildlife Office  
2800 Cottage Way, Suite W-2605  
Sacramento, California 95825-1846  
SFWO\_mail@fws.gov



In Reply Refer to:  
08ESMF00-  
2020-I-1745

July 23, 2020

Dena Gonzalez  
Chief, Central Region Biology Branch  
California Department of Transportation, District 6  
855 M Street, Suite 200  
Fresno, California 93721  
dena.gonzalez@dot.ca.gov

Subject: Informal Consultation on the Morning Drive 3R Rehabilitation Project, Kern County, California (California Department of Transportation D6-KER-184-PM 8.5-11.6; EA 06-0U430)

Dear Ms. Gonzalez:

This is the U.S. Fish and Wildlife Service's (Service) response to the California Department of Transportation's (Caltrans) letter requesting the initiation of informal consultation on its action to construct the proposed Morning Drive 3R Rehabilitation Project (project) in Kern County, California. This response is provided under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act), and in accordance with the implementing regulations pertaining to interagency cooperation (50 CFR 402).

Caltrans has assumed the Federal Highway Administration's (FHWA) responsibilities for section 7 consultation per the Act, in accordance with 23 U.S.C. 327, and as described in the *Memorandum of Understanding (MOU) between the FHWA and Caltrans concerning the State of California's participation in the Surface Transportation Project Delivery Program* pursuant to 23 U.S.C. 327 (renewed on December 23, 2016 for a term of five years, and finalized effectively on March 30, 2017). The MOU allows Caltrans to assume the FHWA's environmental responsibilities for highway projects in California under the National Environmental Policy Act and other federal laws.

Pursuant to 50 CFR 402.12(f), you submitted a letter, dated April 22, 2020, which we received in this office on April 27, 2020, along with a biological assessment for our review. You requested concurrence with the findings presented therein. These findings concluded that the proposed project may affect, but is not likely to adversely affect the Bakersfield cactus (*Opuntia basilaris* var. *treleasei*), blunt-nosed leopard lizard (*Gambelia silus*), and San Joaquin kit fox (*Vulpes macrotis mutica*). No critical habitat has been designated for the Bakersfield cactus, blunt-nosed leopard lizard, or San Joaquin kit fox. The project is not within critical habitat for any federally-listed species.

In considering your request we based our evaluation on the following: (1) Caltrans' original April 22, 2020 letter and its biological assessment along with the updated May 2020 biological assessment, (2)

email correspondence between the Service and Caltrans, and (3) other information available to the Service.

### **Description of the Action**

Caltrans proposes to rehabilitate State Route (SR) 184 from post mile (PM) 8.5 to PM 11.6 in the City of Bakersfield. Proposed activities span from approximately 0.1-mile north of the intersection of Edison Highway and SR 184 to 0.1-mile north of the intersection of Chase Avenue and SR 184 (UTM 35.360313, -118.914265 to 35.393049, -118.885696). Roadside shoulders will be widened by eight feet to accommodate a Class 2 bike lane. Existing non-ADA compliant curb ramps and driveways will be repaired. Pavement will be cold planed to a depth of 0.25 feet with a 0.2-foot overlay of hot mixed asphalt. A 0.1-foot cap of rubberized hot mixed asphalt will then be installed over the hot mixed asphalt. Where pavement is degrading, spot locations will be repaired as needed. Multiple spot sections of damaged or missing sidewalk will be repaired or reconstructed as needed. Drainage improvements such as adjusting manholes, inlets, and valves to grade will be made. New drain inlets may be installed where new sidewalk is proposed. Traffic signals will be installed at Edison Highway and Pioneer Drive. All intersections may require pole, conduit, detector loop and cabinet replacement as well as the installation of pedestrian signals and utility relocation. Equipment proposed for use includes, but is not limited to, an excavator, jackhammer, asphalt/cement concrete saw/water saw, grader/dozer, asphalt concrete spreader, asphalt concrete dike extruder, roller compactor, hand compactor jump/plate, asphalt concrete grinder, auger, asphalt concrete delivery trucks, and concrete delivery truck.

### *Scheduling*

Caltrans proposes to begin construction in fall 2022 with approximately 70 total working days. Night work is anticipated but will not likely exceed 20 nights. Caltrans proposes night activities for shoulder widening work between Watergrass Road and Chase Avenue only.

### Conservation Measures

Caltrans and its contractor will implement the following measures to reduce the potential for adverse effects to the Bakersfield cactus, blunt-nosed leopard lizard, and San Joaquin kit fox. For the purpose of this consultation, a “qualified biologist,” as referenced in this document, refers to an individual who, at a minimum, holds a four-year degree in a relevant biological field and who has demonstrated knowledge and experience with these species.

### *General/All Species:*

1. Prior to the start of work/ground disturbance, a qualified biologist(s) will provide worker environmental awareness training for all construction personnel, including contractors, subcontractors, and contractors’ representatives, covering the status of the listed species; how to identify the species and their habitats; the importance of avoiding impacts to the species; the laws that protect them; and what to do if an individual is encountered during construction. New construction personnel who are added to the project after the training is first conducted also will be required to take the training. Documentation of the training, including sign-in sheets, will be kept on-file.
2. Areas located outside of the construction zone will be designated as environmentally sensitive areas (ESA).



3. A qualified biologist(s) will be present on-site to monitor initial ground disturbance as well as all off-pavement work. Otherwise, the biologist(s) will be available on-call during all construction periods in the event federally-listed species are observed either on-site or in proximity to the action area. Any off-pavement staging and storage areas will be approved by the qualified biologist(s).
4. The minimal amount of vegetation necessary will be removed between October 1 and January 31, prior to the nesting bird season.
5. To prevent inadvertent entrapment of federally-listed species or other wildlife during construction of the project, all excavated, steep-walled openings more than six inches deep will be covered at the close of each working day by plywood or similar materials, or provided with one or more escape ramps constructed of earth fill or wooden planks. Before such holes or trenches are filled, they will be thoroughly inspected for trapped wildlife. If at any time a trapped, dead, or injured federally-listed species is discovered, Caltrans will stop work and contact the Service immediately.
6. All construction pipes, culverts, or similar structures with a diameter of four inches or greater that are stored on the construction site for one or more overnight periods will be thoroughly inspected for federally-listed species and other wildlife before burying, capping, or otherwise using the structures. If an individual is discovered during this inspection, the structure will not be disturbed until it leaves of its own accord. If a federally-listed individual is discovered, the structure will not be disturbed until it leaves of its own accord and Caltrans will contact the Service immediately.
7. All food-related trash items such as wrappers, cans, bottles, and food scraps will be disposed of in closed containers and removed daily from the project site to reduce the potential for attracting predator species.
8. The use of temporary artificial lighting on-site will be limited, except when necessary for construction, or for driver and pedestrian safety. Any artificial lighting used during construction will be confined to areas within the construction footprint and directed away from surrounding habitat. Caltrans will limit non-target casting of light by installing shielding to the light source to further confine the illumination.
9. To eliminate the potential for disturbance, injury, or death to any species resulting from the presence of pets and firearms, with the exception of firearms carried by authorized law enforcement officials, neither will be allowed on the project site.
10. No pesticides or pest/rodent traps will be used on the project site during construction.
11. All project-related vehicles will observe a daytime speed of no more than 20 miles per hour in all project areas, except on the highway. Off-road travel outside of designated project areas will be prohibited. Project personnel will be provided with written guidance on vehicle use and speed limits on unpaved roads.
12. Following the completion of all construction activities, Caltrans will revegetate areas that were subject to temporary ground disturbance, clearing/grubbing, and vegetation removal.

On-pavement equipment will be used to hydro-seed these areas with an appropriate, weed-free native plant seed mixture.

*Bakersfield cactus:*

1. Bakersfield cactus was not detected within 15 feet of the project's proposed activities. However, if Bakersfield cactus stands are detected prior to or during construction, they will be avoided by at least 15 feet.

*Blunt-nosed leopard lizard:*

1. Pre-construction protocol-level surveys for the blunt-nosed leopard lizard will be conducted in accordance with the CDFW *Approved Survey Methodology for the Blunt-Nosed Leopard Lizard* (dated October 2019) shall be conducted in the project footprint as well as within 50 feet of the footprint within at least one year prior to the start of construction. If blunt-nosed leopard lizards are detected, the Service shall be consulted prior to the start of construction activities.
2. Where possible, burrows greater than one inch in diameter will be avoided by 50 feet.

*San Joaquin Kit Fox:*

1. Following the Service's 2011 *Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior to and During Ground Disturbance*, preconstruction surveys will be conducted no more than 30 days prior to the beginning of ground disturbance and/or construction activities. Surveys for the San Joaquin kit fox and its dens will be performed throughout the project footprint as well as within 200 feet of the footprint.
  - a. Caltrans will submit to the Service a letter report and map showing the results of the surveys and the locations of any potential and/or known dens within five days of the survey.
2. If potential, atypical, known, and/or natal/pupping dens are discovered prior to or during construction, disturbance to these dens will be avoided.
  - a. Potential and atypical dens that are located at least 50 feet from construction will be protected with a 50-foot exclusion zone. Known dens that are located at least 100 feet from construction will be protected with a 100-foot exclusion zone. In instances where 50-foot or 100-foot zones cannot be maintained, potential and/or known dens will be monitored for three consecutive nights using tracking medium and/or a remote sensor camera. If potential or known dens are verified to be unoccupied and the exclusion zone(s) cannot be maintained, the possibility for reduced exclusion zones will be determined in coordination with the Service. Potential and known dens will continue to be monitored for the duration of work in the area. Details pertaining to monitoring efforts will be discussed with the Service. The exclusion zones will be demarcated by types of fencing or flagging that do not entangle the San Joaquin kit fox or prevent ingress/egress.
  - b. A qualified biologist(s) will check potential, atypical, and/or known dens every two weeks to ensure that the no-work buffers remain intact for the duration of the project. If animal activity is observed, the biologist(s) will monitor the site for a

minimum of three consecutive nights to determine whether the den(s) is occupied or unoccupied.

- c. If a natal/pupping den is discovered either within the project footprint or within 200 feet of the footprint, Caltrans will notify the Service immediately.
- 3. During preconstruction surveys or during construction, if spot checks find evidence of the San Joaquin kit fox or its sign, a qualified biologist(s) will be present on-site during all project-related activities occurring at the location where the species and/or its sign was identified and the Service will be notified immediately.
- 4. During nighttime construction activities, a Service-approved biologist will conduct at least one worksite spot check for San Joaquin kit fox between the hours of dusk and dawn, twice per week. Depending on the results of early monitoring efforts, Caltrans may increase or decrease the frequency of these spot checks in coordination with the Service.

#### Action Area

The action area is defined in 50 CFR 402.02, as “all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action.” The action area is composed of the project footprint plus a 200-foot buffer from the edge of the project footprint. This buffer captures the potential for further-reaching effects of construction activities such as temporary noise, dust, vibrations, and visual disturbance. The project footprint encompasses the area directly impacted by construction-related activities, equipment, and personnel. The project footprint consists of an approximately 3.1-mile segment of SR 184, including all pavement/hardscape and other roadway infrastructure such as private driveways and dirt roads. The project footprint also includes temporary construction easements, access roads, and staging areas.

The action area is approximately 218 acres consisting primarily of developed, disturbed, or ruderal areas due to hardscaped residential areas, commercial development, schools, SR 184, routine roadside maintenance, other maintenance activities associated with landscaped areas and agricultural activities, homeless camps, a fire which occurred in 2019 in the northeast corner of the action area, illegal dumping, tilling, grazing, and recreational uses such as motorbikes, ATVs, and other off-road vehicle use. Non-native grasslands are located primarily in the northern portion of the action area with some scattered throughout open fields in residential lots that have not been developed. These grasslands provide high quality habitat for the Bakersfield cactus, blunt-nosed leopard lizard (including burrows), and San Joaquin kit fox (foraging and dispersal only) while disturbed and ruderal areas provide low quality habitat. One intermittent stream traverses the action area on the north end of the action area and provides habitat for these three species; however, no work will occur along the bed or bank of the stream. A total of 41.1 acres of Bakersfield cactus, blunt-nosed leopard lizard, and San Joaquin kit fox habitat is in the action area. The action area is suitable only for San Joaquin kit fox foraging and dispersal as no potential, atypical, or known dens were observed. Areas adjacent to the action area consist of much of the same distribution of habitat types with most of the high quality habitat occurring in undeveloped areas at the north and northeast east portions of the action area.

Caltrans performed general reconnaissance-level surveys on June 13, 2019, November 21, 2019, and January 6, 2020. Caltrans biologists did not observe any evidence of the Bakersfield cactus, blunt-

nosed leopard lizard, or San Joaquin kit fox in the action area. According to the CNDDDB<sup>1</sup>, there are 13 Bakersfield cactus records, both recent and historical, within five miles of the action area. This species was observed in the action area in 1989; however, is likely extirpated due to residential development. Five blunt-nosed leopard lizard records, both recent and historical, are within five miles of the action area. There are no records of the blunt-nosed leopard lizard in the action area. There are 24 San Joaquin kit fox records, both recent and historical, within five miles of the action area. There are no records of the San Joaquin kit fox (dens, foraging individuals, or transient individuals) in the action area.

### Effects Analysis

A total of 10.43 acres will be impacted with approximately 2.04 acres of temporary impacts and 5.7 acres of permanent impacts to Bakersfield cactus, blunt-nosed leopard lizard, and San Joaquin kit fox habitat (foraging and dispersal only). The remainder of the impacts that will occur in the action area are not suitable for these species.

#### *Bakersfield Cactus*

Adverse effects due to permanent impacts from bike lane and sidewalk construction, will result in the reduction of Bakersfield cactus habitat; however, the existing habitat is of low quality so the likelihood of presence or adverse effects due to habitat reduction is low. Temporary impacts due to ground disturbance from heavy equipment, foot traffic, temporary access roads, and staging areas may result in the temporary reduction of habitat. However, due to the low quality habitat in the action area and impact areas due to existing development and frequently maintained roadways, parks, schools, and other landscaped areas, the likelihood for this species to be present is low and adverse effects are not anticipated. If Bakersfield cactus stands are detected prior to or during construction, they will be avoided by 15 feet.

Caltrans has determined the proposed project may affect, but is not likely to adversely affect the Bakersfield cactus. The Service concurs with this conclusion for the following reasons: (1) due to the lack of recent records in the action area and no detection of Bakersfield cactus stands during general site assessments, the likelihood of this species occurring near a work area is low, (2) suitable habitat in the action area is of low quality so likelihood for this species to be present is low, and (3) project impacts will be localized and of low intensity and duration. With the implementation of conservation measures, the Service expects adverse effects to the Bakersfield cactus will be insignificant and discountable.

#### *Blunt-nosed leopard lizard and San Joaquin kit fox*

Project activities are unlikely to result in adverse effects due to the low potential for this species to be present in the action area. However, adverse effects that have a low potential to occur include mortality or injury. This may occur from crushing individuals in burrows or above ground during initial clearing and grubbing, cutting and regrading slopes, fill and leveling for widening roadside shoulders for the bike lane, and pavement repair activities. Because all the heavy equipment used for this project is slow-moving, the likelihood for injury or mortality from above ground vehicle strikes is low. Where possible, potential blunt-nosed leopard lizard burrows will be avoided. Noise and vibrations from these activities also have the potential to cause disturbance to these species. The

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<sup>1</sup> California Natural Diversity Database. 2020. Natural Heritage Division, California Department of Fish and Wildlife. RareFind 5. Sacramento, California. Accessed June 19, 2020.

blunt-nosed leopard lizard may avoid or relocate from the area temporarily due to these activities. Project activities may also result in the temporary disturbance to small mammals and their burrows (i.e., potential reduction of prey available to the San Joaquin kit fox); however, temporary impacts to habitat will be re-contoured post-construction and suitable for the San Joaquin kit fox and small mammals to occupy. No kit fox dens are present within 200 feet of the project footprint so only transient individuals are expected to have a potential to be dispersing through the area, most likely during night work. While there will be permanent removal of habitat for these species, it is unlikely either the blunt-nosed leopard lizard or San Joaquin kit fox are present due to the highly disturbed vegetation communities where permanent impacts are proposed. Operation and maintenance activities as well as traffic on this portion of SR 184 are not anticipated to increase significantly once construction is complete. Therefore, an increase in vehicle strikes after construction is complete, is not anticipated. Widening SR 184 by eight feet is not anticipated to significantly increase habitat fragmentation from baseline conditions or the ability for the blunt-nosed leopard lizard or San Joaquin kit fox to traverse SR 184.

Caltrans has determined the proposed project may affect, but is not likely to adversely affect the blunt-nosed leopard lizard or San Joaquin kit fox. The Service concurs with this conclusion for the following reasons: (1) due to the lack of recent records in the action area and lack of evidence of these species' presence during reconnaissance-level surveys in the action area, the likelihood of this species occurring in or near a work area is low, (2) the high level of site disturbance and lack of quality habitat in and immediately surrounding the project footprint, (3) the increase in hardscape due to bike lane installation and sidewalk repair/installation is not anticipated to cause a significant increase in habitat fragmentation or vehicle strikes that would result in adverse effects to the species, and (4) the scale and scope of project impacts will be minor and of relatively short in duration. With the implementation of conservation measures, the Service expects impacts to blunt-nosed leopard lizard and San Joaquin kit fox will be insignificant and discountable.

### Conclusion

After reviewing all of the available information and appropriate avoidance measures, the Service concurs with your determination that the project may affect, but is not likely to adversely affect the Bakersfield cactus, blunt-nosed leopard lizard, or San Joaquin kit fox.

This concludes the Service's review of Caltrans' action to construct the Morning Drive 3R Rehabilitation Project and the Service's consideration of the project's effects on the Bakersfield cactus, blunt-nosed leopard lizard, and San Joaquin kit fox. No further coordination with the Service under the Act is necessary at this time. Please note, however, this letter does not authorize take of listed species. As provided in 50 CFR §402.14, reinitiation of consultation is required and shall be requested by the federal agency or by the Service where discretionary federal involvement or control over the action has been retained or is authorized by law, and:

- 1) If new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered;
- 2) If the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this letter;
- 3) If a new species is listed or critical habitat designated that may be affected by the identified action.

Dena Gonzalez

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If you have any questions regarding this letter, please contact Kristin Smith, Fish and Wildlife Biologist, ([kristin\\_smith@fws.gov](mailto:kristin_smith@fws.gov)) or at (916) 218-5147, and/or Patricia Cole, San Joaquin Valley Division Chief, ([patricia\\_cole@fws.gov](mailto:patricia_cole@fws.gov)) or at (916) 414-6544, and/or at the letterhead address.

Sincerely,



Patricia Cole  
Chief, San Joaquin Valley Division

cc:

Steven Hulbert, California Department of Fish and Wildlife, Fresno, California

## **List of Technical Studies**

Visual Impact Assessment Study: September 9, 2019

Air Quality Memo: December 6, 2019

Noise, Air and Water Studies Memo: October 29, 2019

Natural Environment Study: January 17, 2020

Historic Property Survey Report: January 23, 2020

Location Hydraulic Study: April 30, 2019

Initial Site Assessment: November 25, 2019

Paleontological Identification Report: March 7, 2019

Climate Change and Greenhouse Gases Analysis: January 2020

To obtain a copy of one or more of these technical studies/reports or the Initial Study, please send your request to the following email address: [d6.public.info@dot.ca.gov](mailto:d6.public.info@dot.ca.gov).

Please indicate the project name and project identifying code (under the project name on the cover of this document) and specify the technical report or document you would like a copy of. Provide your name and email address or U.S. postal service mailing address (street address, city, state and zip code).