



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

### Ecological Services

Carlsbad Fish and Wildlife Office  
6010 Hidden Valley Road, Suite 101  
Carlsbad, California 92011



In Reply Refer To:  
FWS-SB11B0189-1110511

**AUG 23 2011**

Mr. Don Copeland  
Senior Environmental Planner  
Department of Transportation – District 8  
Environmental Planning (MS 822)  
464 West Fourth Street, 6<sup>th</sup> Floor  
San Bernardino, California 92401

Subject: Informal Section 7 Consultation for the State Route 38 Roadbed Repair Project,  
San Bernardino County, California

Dear Mr. Copeland,

This is in response to your correspondence dated July 15, 2011, requesting our concurrence with your determination the proposed State Route 38 (SR-38) Roadbed Repair Project (Project) in San Bernardino County between milepost (MP) 15.0 and MP 49.5 is not likely to adversely affect the federally endangered southwestern willow flycatcher (*Empidonax trillii extimus*, “flycatcher”), in accordance with section 7 of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*). The proposed Project is receiving Federal funding through the Federal Highway Administration (FHWA), and your agency, the California Department of Transportation (Caltrans), has assumed the FHWA’s responsibilities under the Act for this consultation in accordance with Section 6005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) 2005, as described in the National Environmental Policy Act (NEPA) Delegation Pilot Program Memorandum of Understanding between FHWA and Caltrans (effective July 1, 2007) and codified in 23 U.S.C. 327(a)(2)(A).

Caltrans proposes to cold-plane 0.2 feet (ft) of existing asphalt and overlay the abraded area with 0.2 ft of hot-mix asphalt. In addition to the resurfacing activities, the proposed Project will also upgrade existing metal beam guardrails, dikes, and curb ramps to current standards for those structures that do not meet current standards. All roadbed resurfacing and structure replacement/upgrades will be contained within the existing roadbed or adjacent areas. Equipment staging will take place in existing roads, turnouts, and shoulders. We have reviewed the information provided to us, including the *From Valley of the Falls to Big Bear City 08-SBD-38-PM 15.0-49.5* supplemental Natural Environmental Study (NES) (March 2011) and your informal initiation letter referenced above.

Between MP 30.5 (approximately 3 miles east of Barton Flats Campground) and MP 37.0 (located near the intersection of Cienega Seca Canyon and SR-38), the proposed Project area

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Mr. Don Copeland (FWS-SB-11B0189-1110511)

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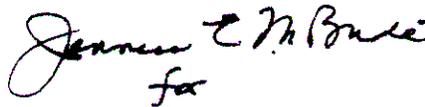
crosses designated critical habitat for the flycatcher. Following the proposed avoidance and minimization measures included in the NES, all construction activity will occur within existing paved areas. Therefore, permanent, direct impacts to flycatcher and flycatcher designated critical habitat are not likely to occur.

Temporary indirect impacts, in the form of noise and vibrations from construction activities, may exceed normal levels from routine traffic and may adversely affect the nesting activities of flycatcher. However, with implementation of the proposed avoidance and minimization measures, no Project activity will occur between MP 30.5 and MP 37.0 between February 15 and September 15; therefore, adverse impacts to flycatcher associated with construction noise and vibration during the breeding season are not likely to occur.

Based on the proposed Project description and the implementation of the avoidance and minimization measures included in the supplemental NES, we concur with your determination that the proposed Project is not likely to adversely affect the flycatcher or its designated critical habitat. The interagency consultation requirements of section 7 of the Act have been satisfied. Although our concurrence ends informal consultation, obligations under section 7 of the Act will be reconsidered if new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not previously considered, or this action is subsequently modified in a manner that was not considered in this assessment.

Thank you for your coordination on this project. If you have any questions regarding this letter, please contact John M. Taylor of this office at (760) 431-9440, extension 208.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kennon A. Corey", with a small "for" written below it.

Kennon A. Corey  
Assistant Field Supervisor