

## **Middle-Mile Broadband Network (MMBN) Infrastructure Projects – Biological Resources**

TR – 0451 (New 06/25)

In addition to the attached Encroachment Permit General Provisions (TR-0045), the following special provisions are also applicable to Middle-Mile Broadband Network (MMBN) projects:

**1. GENERAL:** The California Department of Technology (CDT) is partnering with joint builders, including private broadband providers, to install broadband infrastructure within the State highway right-of-way as part of the MMBN infrastructure. "Joint Builder" refers to MMBN partners, whether the infrastructure is owned or leased by CDT.

**2. APPLICABILITY:** These provisions apply to CDT MMBN joint build projects when biological resources are identified in the permittee's MMBN project.

### **3. DEFINITIONS**

**listed species:** Species listed as threatened or endangered under (1) the federal Endangered Species Act of 1973, 16 USC § 1531 et seq., (2) California Endangered Species Act, Fish & Game Code §§ 2050–2115.5, or (3) both.

**nongame birds:** Birds identified in the Fish and Game Code as nongame birds.

**migratory birds:** Birds protected by the Migratory Bird Treaty Act, federal Endangered Species Act, Bald and Golden Eagle Act, and Fish and Game Code,

**protective radius:** Minimum distance between construction activities and a regulated species.

**regulated species:** Species protected by one or a combination of the following:

- Federal Endangered Species Act of 1973, 16 USC § 1531 et seq.
- California Endangered Species Act, Fish & Game Code §§ 2050–2115.5
- Fish & Game Code §§ 1600–1616
- National Environmental Policy Act, 42 USC § 4321 et seq.
- California Environmental Quality Act, Pub Res Code § 21000 et seq.
- Other law or regulation governing activities that affect species or their habitats

**take:** Legal definition regarding harm to listed species as defined in 16 USC § 1532 and Fish & Game Code § 86.

**take permit:** Permit granted by the US Fish and Wildlife Service or the NOAA Fisheries that allows take of federal-listed species under 16 USC § 1539 or by the Department of Fish and Wildlife that allows take of state-listed species under Fish & Game Code § 2081.

## **4. SPECIES PROTECTION AND PERMITTEE-SUPPLIED BIOLOGIST**

### **4-1A General**

Section 4-1A applies if species protection areas and requirements are present to protect regulated species and their habitat that occur within or near the job site.

Upon discovery of a regulated species, immediately:

1. Stop all work within a 100-foot radius of the discovery
2. Notify the State Representative

### **4-1B Bird Protection**

The following laws protect migratory and nongame birds, their occupied nests, and their eggs:

- The federal Migratory Bird Treaty Act, 16 USC § 703–711, 50 CFR 10, and Fish & Game Code §§ 3503, 3513, and 3800 protect migratory and nongame birds, their occupied nests, and their eggs.
- The federal Endangered Species Act of 1973, 16 USC § 1531 and § 1543, and the California Endangered Species Act, Fish & Game Code §§ 2050–2115.5, prohibit the take of listed species and protect occupied and unoccupied nests of threatened and endangered bird species.
- The Bald and Golden Eagle Protection Act, 16 USC § 668, prohibits the destruction of bald and golden eagles and their occupied and unoccupied nests.

Nesting or attempted nesting may occur from February 1 to September 30.

If you find an injured or dead bird or discover migratory or nongame bird nests that may be adversely affected by construction activities, immediately:

1. Stop all work within a 100-foot radius of the discovery
2. Notify the State Representative

The State Representative will investigate the discovery. Do not resume work within the radius of the discovery until authorized. If ordered, perform one or a combination of the following protection measures:

1. Install exclusion devices
2. Use nesting-prevention measures
3. Remove and dispose of partially constructed and unoccupied nests of migratory or nongame birds on a regular basis to prevent their occupation. Prevent nest materials from falling into waterways.

#### **4-1C Permittee-Supplied Biologist**

##### **4-1C(1) General**

Section 4-1C applies if a permittee-supplied biologist is required, and to fulfil the monitoring requirements described in [Senate Bill 156/Section 21080.51 of the Public Resources Code](#). The permittee-supplied biologist monitors work activities for the protection of regulated species. The permittee-supplied biologist must:

1. Monitor regulated species within the project area
2. Ensure that construction activities do not result in the take of regulated species
3. Ensure that construction activities comply with Permits, Licenses, Agreements, Certifications, and Approvals (PLACs)
3. Notify the State Representative immediately of any take of regulated species or violation of a biological resource PLAC
4. Submit permittee-supplied biologist signed notifications and reports to the State Representative

All reports must include:

1. Description of the implementation of PLAC requirements
2. Names of the biologists conducting biological activity
3. Dates and times of monitoring
4. Locations and activities monitored
5. Representative photographs
6. Findings
7. Recommended protective measures if regulated species are observed
8. Name of the biologist who prepared the report
9. Signature of the biologist certifying the accuracy of the report
10. Details of any take of regulated species or violation of a biological resource PLAC

Submit the name, resume, and statement of qualifications for the permittee-supplied biologist at least 35 business days before starting work in the monitoring area. If required under PLACs, the State Representative sends the biologist's statement of qualifications to regulatory agencies for review and approval before hiring. Allow 30 days for the regulatory agencies' review. If the submittal is

incomplete, the State Representative provides comments. Submit a revised statement of qualifications within 5 business days of receiving comments.

Biologists who perform specialized activities must have field experience working with the regulated species or performing the specialized task. All project-specific authorizations must be current and valid from start of work until work completion.

Do not start work until the permittee-supplied biologist is approved by regulatory agencies authorized.

#### **4-1C(2) Natural Resource Protection Plan**

Section 4-1C(2) applies if a natural resource protection plan is required for the permittee's MMBN project. The plan must describe measures for protecting biological resources and complying with environmental laws, regulations, and PLACs.

The plan must be prepared and signed by a permittee-supplied biologist knowledgeable of the regulated species and their habitats.

Submit your plan within 5 business days after issuance of the encroachment permit. If the submittal is incomplete, the State Representative provides comments. Submit a revised plan within 7 business days of receiving comments. The plan must be approved before the start of job site activities.

The plan must include:

1. List of regulated species and habitats expected at the job site
2. List of protocols for species protection surveys with full protocols in an appendix
3. Protection measures for regulated species expected at the job site
4. Protective radii for encounters with regulated species
5. Implementation plan and monitoring schedule for protection measures
6. 6 Monitoring duties
7. Justification for each instance where protection measures and an implementation plan are not necessary for a regulated species
8. Schedule for inspecting protection measures
9. Schedule for maintaining protection measures
10. Schedule for submittal of monitoring reports
11. Response plan for encounters with regulated species
12. Content and schedule for the biological resource information program
13. Location and schedule of fence installation and removal, including identification of the species or habitats to be protected within each ESA or species protection area
14. Protection measures required within each species protection area