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Governor's Office of Planning & Research

April 4 2024

STATE CLEARINGHOUSE

April 4, 2024

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Subject: Carmel Lagoon Ecosystem Protective Barrier, Scenic Road Protection Structure, and Interim Sandbar Management Plan Project (Project) Revised Draft Environmental Impact Report (RDEIR) SCH No.: 2014071050

Dear Melanie Beretti:

The California Department of Fish and Wildlife (CDFW) received a revised draft Environmental Impact Report (RDEIR) from Monterey County for the 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, we appreciate 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 the Fish and Game Code. While the comment period may have ended, CDFW respectfully requests that Monterey County still consider our comments.

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 & Game Code, Section 711.7, subd. (a) & 1802; Pub. Resources Code, Section 21070; CEQA Guidelines Section 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., Section 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing

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specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, Section 21069; CEQA Guidelines, Section 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 & Game Code, Section 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 & Game Code, Section 2050 et seq.), related authorization as provided by the Fish and Game Code may be required.

Fully Protected Species: CDFW has jurisdiction over fully protected species of birds, mammals, amphibians and reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

- Take is for necessary scientific research,
- Efforts to recover a fully protected, endangered, or threatened species, live capture, and relocation of a bird species for the protection of livestock, or
- They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Additionally, specified types of infrastructure projects may be eligible for an incidental take permit for unavoidable impacts to fully protected species if certain conditions are met (see Fish & G. Code §2081.15). Project proponents should consult with CDFW early in the project planning process if an Incidental Take Permit (ITP) may be pursued for the Project.

PROJECT DESCRIPTION SUMMARY

Proponent: County of Monterey

Objective: The proposed project would consist of three components: 1) the Ecosystem Protective Barrier (EPB); 2) the Scenic Road Protection Structure (SRPS); and 3) an Interim Sandbar Management Plan (ISMP). The proposed Project was originally analyzed in the Scenic Road Protection Structure, and Interim Sandbar Management Plan Project Draft Environmental Impact Report (DEIR) (REF120051; SCH2014071050). In response to public comments on the DEIR, the County of Monterey elected to conduct additional technical studies & environmental analyses

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associated with project alternatives, which resulted in the RDEIR being prepared for the Project.

Location: The proposed Project is located within and adjacent to the Carmel River State Beach and Lagoon between State Route Highway 1 and the Pacific Ocean in the unincorporated Carmel area of Monterey County, California. The Project site includes Assessor's Parcel Numbers (APNs) 009-472-001-000; 009-481-004-000; 009-491-001-000; 243-011-001-000; 009-511-009-000; 009-511-011-000; 009-511-007-000; and 009-511-006-000.

Timeframe: Not specified.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist Monterey County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the CEQA document prepared for this Project.

Due to the complex and sensitive nature of this project and diversity of State resources that may potentially be impacted by Project-related activities, it is recommended that early coordination occur between Monterey County and State and federal agencies. In particular, CDFW requests to be included during discussions with federal agencies such as the National Marine Fisheries Service (NMFS) and the U.S. Army Corps of Engineers (USACE), on Project-related activities such as sandbar management techniques, timing of construction, development of the monitoring and reporting program, and management of invasive species.

Currently, the RDEIR acknowledges that the Project area is within the geographic range of several special status animal species and proposes specific mitigation measures to reduce impacts to less than significant. CDFW has concerns about the ability of some the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for several special status animal species, including the State fully protected and federal threatened southern sea otter (*Enhydra lutris nereis*); the State threatened tricolored blackbird (*Agelaius tricolor*); the State candidate for listing western bumble bee (*Bombus occidentalis*); the State species of special concern and federally threatened California red legged frog (*Rana draytonii*); and the federally endangered South-Central California Coast steelhead (S-CCC steelhead) (*Oncorhynchus mykiss*) and tidewater goby (*Eucyclogobius newberryi*). CDFW is also concerned regarding potential impacts to marine mammals, including the harbor seal (*Phoca vitulina*) and California sea lion (*Zalophus Californianus*). Finally, CDFW is concerned about the

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ability of some of the proposed mitigation measures to reduce impacts to less than significant and avoid the unauthorized take of special status plant species.

Comment 1: Southern Sea Otter, Harbor Seal, and California Sea Lion

Page 137 of the RDEIR states that, “Additionally, southern sea otters, harbor seals, and California sea lions have the potential to use the coastal strand habitat within the Biological Study Area as a haul-out or resting site; however, due to their mobility, the short duration of construction, and the continual disturbance within the area, impacts to these species would be negligible. Therefore, these species will not be discussed further.” CDFW would like to note that southern sea otter is federally listed and a State fully protected species, both harbor seals and California sea lions are protected under the Marine Mammal Protection Act (MMPA), and the conclusions outlined in the RDEIR for marine mammals are not supported by any actual analysis or data. As the RDEIR does not contain a robust analysis to confirm that marine mammals would not be impacted by Project activities, and no mitigation measures were proposed to mitigate for potential Project-related impacts, consultation with CDFW, U.S. Fish and Wildlife Service (USFWS) and NMFS is recommended for guidance on evaluating impacts to the species, and for incorporating appropriate measures such as avoidance, minimization, and mitigation.

Comment 2: Tricolored Blackbird

Page 144 of the RDEIR provides mitigation measures for tricolored blackbird (TRBL) and states that, “Pre-construction surveys will be conducted no more than 14 days prior to the start of construction activities during the early part of the breeding season”. CDFW concurs with conducting preconstruction surveys for TRBL but recommends conducting these surveys no more than 10 days prior to construction activities.

Comment 3: Western Bumble Bee

Page 601 of the RDEIR states that, “Suitable habitat is present within the area affected by a change in WSE; however, the CNDDDB reported occurrences of this species in the within the proposed project area or the immediate vicinity are historic”. CDFW would like to note that the California Natural Diversity Database (CNDDDB) is populated by voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB and a lack of an occurrence record in the CNDDDB does not mean a species is not present. To adequately assess any potential Project-related impacts to western bumble bee (WBB), CDFW recommends that a qualified biologist conduct focused surveys for WBB and their requisite habitat features using the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species survey protocol (CDFW 2023) during the species colony active period (highest detection probability) from April to September during the survey season immediately

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prior to construction. If WBB needs to be captured or handled as part of the survey effort, please note that a 2081(a) Memorandum of Understanding (MOU) with CDFW will be needed (CDFW 2023). In the event a WBB nest is detected within the Project, consultation with CDFW is warranted to discuss how to implement Project activities and avoid take. If take cannot be avoided, CDFW recommends the Project obtain an ITP, pursuant to Fish and Game Code section 2081 subdivision (b).

Comment 4: California Red-legged Frog

The RDEIR states that the EPB will have little to no impact on the environment based on the mitigation measures that will be imposed, while page 138 of the RDEIR states that, “3.1 acres of habitat that would be isolated from the Lagoon by the placement of the proposed EPB project component, which may present a full or partial barrier to some species”. CDFW would like to note that the RDEIR does not provide detailed information on the impact that the EPB would have on the species that utilize the lagoon habitat and would be isolated after EPB installation. As such, it appears the conclusions drawn in the RDEIR are not supported by substantive evidence and CDFW recommends a more robust analysis be conducted to confirm the Project would not have a substantial adverse effect, either directly or through habitat modification, to California red-legged frog (CRLF) and their habitat within the Project site.

Page 143 of the RDEIR states that, “If necessary to work during the nighttime, construction lighting shall be focused and downward directed to preclude night illumination of adjacent habitats”. Artificial lighting used at night for Project purposes could temporarily affect wildlife. Many species use photoperiod cues for communication, determining when to begin foraging, thermoregulation behavior, and migration (Longcore and Rich 2004, Miller 2006, Nightingale et al. 2006, Perry et al. 2008, Stone et al. 2009). Phototaxis, a phenomenon which results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore and Rich 2004). CDFW concurs with using focused lighting at night and recommends that long-wavelength light sources be used and not short wavelength light sources. Long wavelength light sources will have the least effect on wildlife, especially CRLF.

Page 146 of the RDEIR states that, “The monitoring program will assess breeding/rearing conditions and relative numbers and distribution of CRLF throughout the year and in response to lagoon sandbar management activities”. CDFW concurs with having a monitoring program and recommends the program includes procedures to assess CRLF breeding conditions and relative numbers and distribution of CRLF. Additionally, the monitoring programs should include information on the specific gear being used, when sampling will occur, and protocol for how the handling conditions will

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be for these species. Coordination with the USFWS is also recommended regarding authorization of take of CRLF.

Comment 5: South-Central California Coast Steelhead

Mitigation measure BIO-1f discusses pile-driving for the EPB. CDFW concurs with the portion of BIO-1f that mentions that the use of a vibratory hammer is preferable, as opposed to an impact driver, to help minimize negative impacts to South-Central California Coast steelhead (S-CCC) steelhead and other aquatic fauna. CDFW recommends that the vibratory hammer be prioritized over an impact driver to the most practicable extent.

CDFW also recommends that pile driving work take place in the early-middle of the dry season (roughly June-August), to minimize the potential for impacts to S-CCC steelhead, or after high winter flows have receded and prior to filling of the lagoon to capacity after the sandbar has formed.

Page 146 of the RDEIR states that, "The monitoring program will assess breeding/rearing conditions and relative numbers and distribution S-CCC steelhead, and degree of smoltification and of S-CCC steelhead throughout the year and in response to lagoon sandbar management activities". CDFW concurs with having a monitoring program and recommends the program includes procedures to assess S-CCC steelhead breeding/rearing conditions, the relative numbers and distribution S-CCC steelhead, and the degree of smoltification of S-CCC steelhead throughout the year in response to lagoon sandbar management activities. Additionally, the monitoring programs should include information on the specific gear being used, when sampling will occur, and protocol for how the handling conditions will be for these species. Coordination with NMFS is also recommended regarding authorization of take of S-CCC steelhead.

The RDEIR states that the EPB will have little to no impact on the environment based on the mitigation measures that will be imposed, while page 138 of the RDEIR states that, "3.1 acres of habitat that would be isolated from the Lagoon by the placement of the proposed EPB project component, which may present a full or partial barrier to some species". CDFW would like to note that the RDEIR does not provide detailed information on the impact that the EPB would have on the species that utilize the lagoon habitat and would be isolated after EPB installation. As such, it appears the conclusions drawn in the RDEIR are not supported by substantive evidence and CDFW recommends a more robust analysis be conducted to confirm the Project would not have a substantial adverse effect, either directly or through habitat modification, to S-CCC steelhead and their habitat within the Project site.

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Page 143 of the RDEIR states that, “If necessary to work during the nighttime, construction lighting shall be focused and downward directed to preclude night illumination of adjacent habitats”. Artificial lighting used at night for Project purposes could temporarily affect wildlife. Many species use photoperiod cues for communication, determining when to begin foraging, thermoregulation behavior, and migration (Longcore and Rich 2004, Miller 2006, Nightingale et al. 2006, Perry et al. 2008, Stone et al. 2009). Phototaxis, a phenomenon which results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore and Rich 2004). CDFW concurs with using focused lighting at night and recommends that long-wavelength light sources be used and not short wavelength light sources. Long wavelength light sources will have the least effect on wildlife, especially S-CCC steelhead.

Comment 6: Special-status Plants

The RDEIR states that focused special status plant surveys were conducted between March and May 2015 and concluded that there is little to no potential for special status species being found on the Project site. CDFW would like to note that these surveys were conducted almost 10 years ago during an extended period of below average precipitation. As such, CDFW strongly recommends conducting additional plant surveys prior to construction and during a year of average or above average precipitation. CDFW recommends these surveys be conducted by a qualified botanist following the “Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities” (CDFW 2018). This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. In the absence of protocol-level surveys being performed, additional surveys may be necessary.

Comment 7: Qualified Biologist

Mitigation Measure BIO-1C states that, “After ground disturbing project activities are complete, the qualified biologist shall train an individual from the construction crew to act as the on-site construction biological monitor”. CDFW does not concur with this portion of Mitigation Measure BIO-1C and would like to note a trained crew member does not have the experience, education, and knowledge necessary to be qualified as a biological monitor. As such, to ensure that State special-status species and resources are adequately avoided and protected, and all mitigation measures outlined in the RDEIR are complied with, CDFW recommends that a qualified biologist be onsite for the duration of the Project. construction.

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Comment 8: Tidewater Goby

The RDEIR notes that tidewater goby (TWG) is unlikely to occur within the Project area. CDFW would like to note, that while it is believed that tidewater goby (TWG) may no longer present within the Carmel River Lagoon, it is possible that TWG may recolonize the Carmel Lagoon through dispersal from existing nearby populations, such as the Salinas River Lagoon. Although TWG have not appeared in seine surveys within the lagoon in recent years, it is plausible that these surveys may miss TWG as they target juvenile steelhead, which generally occupy deeper waters in proximity to the channel within the lagoon, as opposed to extremely shallow backwater habitat with dense aquatic vegetation. As such, consultation with CDFW and the USFWS is recommended for guidance on evaluating impacts to the species, and for incorporating appropriate measures such as avoidance, minimization, and mitigation.

Editorial Comments and/or Suggestions

Federally Listed Species: CDFW recommends consulting with USFWS regarding potential impacts to federally listed species including but not limited to southern sea otter, CRLF, S-CCC steelhead, and TWG. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any Project activities.

Lake and Stream Alterations: Based on the information provided in the RDEIR, Project activities within the lagoon and adjacent riparian habitats are subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral, intermittent, or episodic, as well as those that are perennial.

CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement; therefore, if the DEIR approved for the Project does not adequately describe the Project and its impacts to lakes or streams, a subsequent CEQA analysis may be necessary for LSA Agreement issuance. For information on notification requirements, please refer to CDFW's website (<https://wildlife.ca.gov/Conservation/LSA>) or contact CDFW staff in the Central Region Lake and Streambed Alteration Program at (559) 243-4593 or R4LSA@wildlife.ca.gov.

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Definition of a Flooding Emergency: Page 136 of the DEIR states that, “Sandbar management would be limited to only true flooding emergencies and allow for improved hydrological and morphological processes to occur”. CDFW would like to note that a “flooding emergency” is not defined and as such, adequate information is lacking in the RDEIR to determine the frequency and extent of sandbar management. As such, CDFW recommends providing further clarity and specific details on what conditions and/or circumstances would trigger sandbar management.

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

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, Section 21003, subd. (e).) Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be 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. 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

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, Section 753.5; Fish & G. Code, Section 711.4; Pub. Resources Code, Section 21089.)

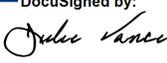
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CONCLUSION

CDFW appreciates the opportunity to comment on the RDEIR to assist County of Monterey Housing & Community Development in identifying and mitigating Project 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>). Please see the enclosed Mitigation Monitoring and Reporting Program (MMRP) table which corresponds with recommended mitigation measures in this comment letter. Questions regarding this letter or further coordination should be directed to Evelyn Barajas-Perez, Environmental Scientist, at (805) 503-5738 or Evelyn.Barajas-Perez@Wildlife.ca.gov.

Sincerely,

DocuSigned by:

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- California Department of Fish and Wildlife. 2023. Survey considerations for California Endangered Species Act candidate bumble bee species. California Department of Fish and Wildlife, Sacramento, California, USA.
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Attachment 1

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

PROJECT: (RDEIR) Carmel Lagoon Ecosystem Protective Barrier (Project)

SCH No.: 2014071050

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation measure: Western bumble bee	
Western bumble bee protocol survey	
Mitigation measure: Special-status Plants	
Special-status plant protocol surveys	