



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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December 6, 2024

Alissa Guther, Transportation Planner
Transportation Agency for Monterey County
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**Subject: Pajaro-Watsonville Multimodal Station Project (Project)
Notice of Preparation (NOP)
State Clearinghouse No.: 2003091011**

Dear Alissa Guther:

The California Department of Fish and Wildlife (CDFW) received a NOP to prepare a Supplemental Environmental Impact Report (SEIR) from the Transportation Agency for Monterey County (TAMC), as Lead Agency, for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Id., § 1802.). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, reasonably foreseeable future projects may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of reasonably foreseeable future projects 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.

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

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 (ITP) 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 ITP may be pursued for the Project.

Unlisted Species: Species of plants and animals need to be officially listed as Endangered, Rare, or Threatened (E, R, or T) on any State or Federal list to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for E, R, or T under CEQA Guidelines section 15380, CDFW recommends it should be fully considered in the environment analysis for the Project.

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PROJECT DESCRIPTION SUMMARY

Proponent: Transportation Agency for Monterey County

Objective: The Project proposes to construct a passenger rail loading platform, platform shelters, lighting, landscaping, furniture and fixtures, ticket vending machines, information displays, bus, shuttle, and van loading and unloading berths, bicycle and pedestrian facilities, bicycle and pedestrian access to the Monterey Bay Sanctuary Scenic Trail and Coastal Rail Trail, parking, and a new signalized intersection at Salinas Road and Lewis Road.

Location: The Project would be located in the unincorporated community of Pajaro in Monterey County, near Watsonville Junction. The City of Watsonville, located in Santa Cruz County, is just northwest of the Project across the Pajaro River, and the Project is approximately 1.5 miles from downtown Watsonville.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the TAMC 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.

A review of the California Natural Diversity Database (CNDDDB) (CDFW 2024) shows the Project site is within the geographic range of several special-status species, including: the State threatened tricolored blackbird (*Agelaius tricolor*); the State and federally threatened California tiger salamander – Central California Distinct Population Segment (DPS) (*Ambystoma californiense*); the State fully protected white-tailed kite (*Elanus leucurus*); the State candidate western burrowing owl (*Athene cunicularia hypugaea*), Crotch's bumble bee (*Bombus crotchii*), and Western bumble bee (*Bombus occidentalis*); and the State species of special concern and federally threatened California red legged frog (*Rana draytonii*).

Tricolored Blackbird

The Project site is within the known geographic range of tricolored blackbird (TRBL) and an occurrence was documented approximately 0.25-mile south of the Project vicinity (CDFW 2024). Based on aerial imagery and the information provided, there are several agricultural fields within and surrounding the Project site that could contain habitat suitable for TRBL nesting and foraging. As TRBL have the potential to use the Project site and have been documented within the Project vicinity, CDFW recommends doing focused surveys as part of the biological studies conducted in support of the SEIR. In

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addition to focused surveys for TRBL, CDFW recommends the SEIR include the following:

Recommended Mitigation Measure 1: TRBL Surveys

CDFW recommends that construction be timed to avoid the normal bird breeding season (February 1 through September 15). However, if construction must take place during that time, CDFW recommends that a qualified biologist conduct surveys for nesting TRBL no more than 10 days prior to the start of implementation to evaluate presence/absence of TRBL nesting colonies in proximity to Project activities and to evaluate potential Project-related impacts.

Recommended Mitigation Measure 2: TRBL Avoidance Buffer

If an active TRBL nesting colony is found during preconstruction surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer in accordance with CDFW's "Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015" (CDFW 2015). CDFW advises that this buffer remain in place until the breeding season has ended or until a qualified biologist has determined that nesting has ceased, the birds have fledged, and are no longer reliant upon the colony or parental care for survival. It is important to note that TRBL colonies can expand over time and for this reason the colony is recommended to be reassessed to determine the extent of the breeding colony within 10 days of Project initiation.

Recommended Mitigation Measure 3: TRBL Take Authorization

If a TRBL nesting colony is detected during surveys, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

California tiger salamander

The Project site is within the known geographic range of California tiger salamander (CTS). CTS breed and develop in vernal and seasonal pools and stock ponds in grassland, woodland, and scrub habitat types and have been determined to be physiologically capable of dispersing up to approximately 1.5-miles from seasonally flooded wetlands (Searcy and Shaffer 2011). Based on aerial imagery and the information provided, there is habitat within the Project vicinity that could provide breeding or upland habitat. As such CDFW recommends that a qualified biologist conduct a habitat assessment for potential CTS breeding ponds and upland habitat within the Project site and 1.5-miles of the Project site as part of the biological studies conducted in support of the SEIR. If this habitat assessment determines that suitable

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breeding or upland habitat is present within or adjacent to the Project site, CDFW recommends that a qualified biologist conduct protocol-level surveys in accordance with the USFWS “Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander” (USFWS 2003) as part of the biological technical studies conducted in support of the SEIR. If surveys indicate the presence or potential presence of CTS, consultation with the CDFW is recommended for guidance on the development of mitigation measures such as take avoidance, minimization, and mitigation. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

White-tailed Kite

The Project site is within the known geographic range of white-tailed kite (WTKI). To avoid potential Project-related impacts to the species, CDFW recommends that a qualified biologist conduct focused surveys for nesting WTKI within a 0.5-mile radius around the Project site as part of the biological studies conducted in support of the SEIR. In addition to the focused surveys for WTKI, CDFW recommends the SEIR include the following:

Recommended Mitigation Measure 4: White-tailed Kite No-disturbance Buffer

CDFW recommends a minimum no-disturbance buffer of 0.5-mile be delineated around active WTKI nests 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.

Recommended Mitigation Measure 5: White-tailed Kite Consultation

In the event that WTKI are detected during surveys, consultation with CDFW is warranted to discuss Project implementation and take avoidance.

Western Burrowing Owl

The Project site is within the known geographic range of western burrowing owl (BUOW), and, based on aerial imagery, it appears that suitable BUOW habitat may be present with the Project site. The California Fish and Game Commission (FGC) approved BUOW as a candidate for potential listing as a protected species under CESA on October 10, 2024, and published these findings in the California Regulatory Notice Register (Notice Register) on October 25, 2024. As such, BUOW is now considered a candidate under CESA and receives the same legal protection afforded to an endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085).

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As BUOW have the potential to be present within the Project site or Project vicinity, CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys following 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012) as part of the biological studies conducted in support of the SEIR. In addition to the habitat assessment and focused surveys for BUOW, CDFW recommends the SEIR include the following:

Recommended Mitigation Measure 6: BUOW Preconstruction Surveys

Depending on the time between the initial survey efforts conducted in support of the SEIR and Project construction, CDFW recommends that additional surveys, following the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012) be repeated the survey season immediately prior to construction.

Recommended Mitigation Measure 7: BUOW Avoidance Buffer

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

Recommended Mitigation Measure 8: BUOW Take Authorization

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

Crotch's Bumble Bee and Western Bumble Bee

The Project site is within the known range of Crotch's bumble bee (CBB) and Western Bumble Bee (WBB). WBB and CBB are known to inhabit areas of grasslands and scrub that contain requisite habitat elements for nesting, such as small mammal burrows and bunch/thatched grasses, and these habitat elements appear to be present within the Project site. As such, CDFW recommends that a qualified biologist conduct a habitat assessment for CBB and WBB as part of the biological studies conducted in support of the SEIR. In addition to the habitat assessment for CBB and WBB, CDFW recommends the SEIR include the following:

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Recommended Mitigation Measure 9: CBB and WBB Habitat Assessment

CDFW recommends a qualified biologist conduct a habitat assessment prior to construction to determine if the Project site and the immediate surrounding vicinity contain habitat suitable to support CBB and or WBB. Potential nesting sites, which include all small mammal burrows, perennial bunch grasses, thatched annual grasses, brush piles, old bird nests, dead trees, and hollow logs would need to be documented as part of the assessment.

Recommended Mitigation Measure 10: CBB and WBB Surveys

If potentially suitable habitat is identified, CDFW recommends that a qualified biologist conduct focused surveys for CBB and/or WBB, and their requisite habitat features following the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023).

Recommended Mitigation Measure 11: CBB and WBB Avoidance

If CBB and or WBB is detected, then CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid take and potentially significant impacts. If ground-disturbing activities will occur during the overwintering period (October through February), consultation with CDFW is warranted to discuss how to implement Project activities and avoid take. Any detection of CBB and or WBB prior to or during Project implementation warrants consultation with CDFW to discuss how to avoid take.

Recommended Mitigation Measure 12: CBB and WBB Take Authorization

If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

California red legged frog

The Project site is within the known geographic range of California red legged frog (CRLF) and a historic occurrence was documented 0.3-mile south of the Project site (CDFW 2024). CRLF primarily inhabits ponds but can also be found in other waterways including marshes, streams, and lagoons. The species will also breed in ephemeral waters (Thomson et al. 2016). Based on aerial imagery and the information provided, there is habitat within the Project vicinity that could contain suitable breeding or upland habitat. As such, CDFW recommends that a qualified biologist conduct a habitat assessment for potential CRLF breeding ponds and upland habitat within the Project site and vicinity as part of the biological studies conducted in support of the SEIR. If this habitat assessment determines that suitable breeding or upland habitat is present within

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or adjacent to the Project site, CDFW recommends that a qualified biologist conduct focused surveys for CRLF as part of the biological technical studies conducted in support of the SEIR. If surveys indicate the presence or potential presence of CRLF, consultation with the CDFW is recommended for guidance on the development of mitigation measures such as take avoidance, minimization, and mitigation.

Editorial Comments and/or Suggestions

Nesting birds: CDFW encourages that Project ground-disturbing activities occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the nesting season (February 1st through September 15th), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Code sections as referenced above.

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

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

Lake and Streambed Alteration: CDFW would like to emphasize that any Project activities that substantially change the bed, bank, and channel of any river, stream, or lake are subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior

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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 or intermittent as well as those that are perennial and may include those that are highly modified such as canals and retention basins.

CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement (LSAA); therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts to lakes or streams, a subsequent CEQA analysis may be necessary for LSAA 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.

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

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database, which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the 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 the CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to the 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 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

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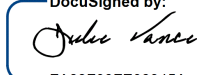
review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist TAMC 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. If you have any questions regarding this letter or further coordination, please contact Evelyn Barajas- Perez, Environmental Scientist, at the address provided on this letterhead, by telephone at (805) 503-5738, or by electronic mail at evelyn.barajas-perez@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...

Julie A. Vance
Regional Manager

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REFERENCES

- California Department of Fish and Game. 2012. Staff report on burrowing owl mitigation. Sacramento, California, USA.
- California Department of Fish and Wildlife. 2015. Staff guidance regarding avoidance of impacts to tricolored blackbird breeding colonies on agricultural fields in 2015. Sacramento, California, USA.
- California Department of Fish and Wildlife. 2023. Survey considerations for California Endangered Species Act candidate bumble bee species. Sacramento, California, USA.
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- Searcy, C.A. and H.B. Shaffer. 2011. Determining the migration distance of a vagile vernal pool specialist: How much land is required for conservation of California tiger salamanders? California State University, Chico, California, USA.
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- U.S. Fish and Wildlife Service. 2003. Interim guidance on site assessment and field surveys for determining presence or a negative finding of the California tiger salamander. Sacramento, California, USA.

Attachment 1

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

**RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)**

PROJECT: Pajaro-Watsonville Multimodal Station Project TAMC (Project)/Notice of Preparation (NOP)/ State Clearinghouse No.: 2003091011

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Tricolored Blackbird (TRBL)	
Mitigation Measure 1: TRBL Survey	
Mitigation Measure 3: TRBL Take Authorization	
White-tailed kite (WTKI)	
Mitigation Measure 5: WTKI Consultation	
Western Burrowing Owl (BUOW)	
Mitigation Measure 6: BUOW Preconstruction Surveys	
Mitigation Measure 8: BUOW take authorization	
Crotch’s Bumble Bee (CBB)/ Western Bumble Bee (WBB)	
Mitigation Measure 9: CBB and WBB Habitat Assessment	
Mitigation Measure 10: CBB and WBB Surveys	
Mitigation Measure 12: CBB and or WBB Take Authorization	
<i>During Construction</i>	
Mitigation Measure 2: TRBL Avoidance Buffer	

Mitigation Measure 4: WTKI no-disturbance buffer	
Mitigation Measure 7: BUOW Avoidance Buffer	
Mitigation Measure 11: CBB and WBB Avoidance	