



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

Bay Delta Region

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**GAVIN NEWSOM, Governor**

**CHARLTON H. BONHAM, Director**



**Governor's Office of Planning & Research**

**February 23, 2021**

February 22, 2021

## **STATE CLEARINGHOUSE**

Coty Sifuentes-Winter, Senior Resource Management Specialist  
Midpeninsula Regional Open Space District  
330 Distel Circle  
Los Altos, CA 94022  
[csifuentes@openspace.org](mailto:csifuentes@openspace.org)

Subject: Wildland Fire Resiliency Program, Draft Environmental Impact Report,  
SCH No. 2020049059, San Mateo, Santa Clara, and Santa Cruz Counties

Dear Coty Sifuentes-Winter:

The California Department of Fish and Wildlife (CDFW) has reviewed the draft Program Environmental Impact Report (EIR) prepared by the Midpeninsula Regional Open Space District (MidPen) for the Wildland Fire Resiliency Program (Project) located in San Mateo, Santa Clara, and Santa Cruz Counties.

CDFW provided comments on the Notice of Preparation (NOP) for the subsequent draft EIR in a letter dated May 20, 2020. CDFW is submitting comments on the draft EIR to inform MidPen, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

CDFW is providing these comments and recommendations regarding activities involved in the Project that are within CDFW's area of expertise and relevant to its statutory responsibilities (Fish and Game Code, § 1802), and/or which are required to be approved by CDFW (California Environmental Quality Act) CEQA Guidelines, §§ 15086, 15096 and 15204).

### **CDFW ROLE**

CDFW is a Trustee Agency with responsibility under CEQA (Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as a California Endangered Species Act (CESA) Permit, a Lake and Streambed Alteration (LSA) Agreement, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

### **REGULATORY REQUIREMENTS**

#### *California Endangered Species Act*

Please be advised that a CESA Permit must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or

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over the life of the Project. Issuance of a CESA Incidental Take Permit (ITP) is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 15380, 15064, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code section 2080.

#### *Lake and Streambed Alteration*

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

### **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Midpeninsula Regional Open Space District

**Project Location:** The proposed activities under the Project would be applied on all lands managed by Midpen, which covers nearly 60,000 acres in portions of San Mateo, Santa Clara, and Santa Cruz counties with other land within the jurisdiction of 17 cities (Atherton, Cupertino, East Palo Alto, Half Moon Bay, Los Altos, Los Altos Hills, Los Gatos, Menlo Park, Monte Sereno, Mountain View, Palo Alto, Portola Valley, Redwood City, San Carlos, Saratoga, Sunnyvale, and Woodside).

**Project Description:** The Midpeninsula Regional Open Space District Wildland Fire Resiliency Program is a planning and implementation document to manage vegetation and infrastructure on Midpen lands as well as planning, response, and monitoring to reduce wildland fire risks. The primary objectives of the Project include: 1) managing vegetation to establish healthy, resilient, fire-adapted ecosystems; 2) managing vegetation and infrastructure to reduce wildland fire risks; 3) integrating prescribed fire

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for vegetation management; and 4) providing an adaptive framework for periodic review and adjustments of the Project based on a changing climate, improved knowledge, and improved technology over time.

The Program would guide a comprehensive approach to management activities and integrate a Vegetation Management Plan (VMP), Prescribed Fire Plan, Wildland Fire Pre-Plan/Resource Advisor Maps, and a Monitoring Plan. The Project's vegetation management activities include fuel load reduction, shaded and nonshaded fuel breaks, ingress/egress route fuel breaks, defensible space, invasive plant species removal and prescribed fire activities.

**Project Duration:** Project activities would occur year-round with certain tools and techniques confined to specific months due to limitations such as the wet season, species protection requirements, permitting restrictions, and official fire seasons.

## **ENVIRONMENTAL SETTING**

MidPen lands encompass portions of San Mateo, Santa Clara, and Santa Cruz counties. These lands, comprised of separate open space preserves (OSPs), are primarily managed to preserve a regional greenbelt of open space land. The OSPs support tidal salt marshes in the east along the San Francisco Bay shoreline. At higher elevations in the Santa Cruz Mountains, these lands are covered in a diverse mix of oak woodland, grassland, chaparral, coastal scrub, and both evergreen and coniferous forests.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the below comments and recommendations to assist MidPen in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources.

### **4.4 Biological Resources**

#### ***MM Biology -2: Special-Status Plants***

The draft EIR discloses that a total of 42 special-status plant species are present or have the potential to occur within the Project areas, with three of these species being state or federally listed as endangered, threatened, and/or rare, and the other 37 species being considered rare by the California Native Plant Society (CNPS).

The Project has the potential to impact special-status plant species from various proposed vegetation management activities, including the removal of vegetation using manual and mechanical methods, prescribed fires, pile burning, grazing, and herbicide use. To mitigate for these potential impacts, the draft EIR proposes mitigation measure *MM Biology -2: Special-Status Plants* which states that prior to Project activity, a

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biological monitor or qualified biologist shall survey the work site to determine the potential presence of special-status plants and document any observations.

*CDFW Comment 1:* The draft EIR does not disclose information on special-status plant survey protocols and methodology to be used during pre-project surveys. The purpose of establishing a specific protocol is to facilitate a consistent and systematic approach to field surveys and assessments of special-status plants and sensitive natural communities so that reliable information is produced and the potential for locating special-status plants and sensitive natural communities is maximized.

*Recommended Mitigation 1:* To further reduce impacts to special-status plants to less-than-significant, CDFW recommends the draft EIR be revised to specify that surveys for special-status plant species will be conducted during the blooming period for all sensitive plant species potentially occurring within the Project area and survey protocols be conducted following CDFW's *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities*, dated March 20, 2018. The protocol can be found online at <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants>.

### ***MM Biology-12: Marbled Murrelet Nest Protection Measures***

The draft EIR discloses the potential for marbled murrelets (*Brachyramphus marmoratus*) to occur within the Project areas, identifies critical habitat locations, and describes potentially suitable nesting habitat requirements that support breeding murrelets. The Project has potential to impact breeding marbled murrelets from auditory and visual disturbance generated during Project activities in proximity to suitable murrelet nesting habitat. To mitigate for these potential impacts, the draft EIR proposes mitigation measure *MM Biology-12: Marbled Murrelet Nest Protection Measures*, which provides comprehensive measures to protect murrelets by avoiding Project activities during the breeding season, implementing seasonal disturbance buffers, and initiating protocol level audio/visual surveys.

*CDFW Comment 2:* In the draft EIR, mitigation measure *MM Biology-12: Marbled Murrelet Nest Protection Measures d(ii)* references seasonal noise disturbance buffers provided by the U.S. Fish and Wildlife Service (USFWS) July 26, 2006 document titled, *Estimation of the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California*. As of October 1, 2020, this USFWS document has been revised to provide updated guidance on the effects of disturbance to marbled murrelets and incorporates the most recent published scientific literature on auditory and visual disturbance. Although the cover letter indicates that the guidance is valid only to the limits of the Russian River watershed, CDFW recommends use of the revised guidance document throughout the murrelet's range.

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*Recommended Mitigation 2:* To further reduce impacts to marbled murrelets to less-than-significant, CDFW recommends the draft EIR reference the revised USFWS *Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California*, dated October 1, 2020. The revised guidance document can be found online at [https://www.fws.gov/arcata/es/birds/mm/m\\_murrelet.html](https://www.fws.gov/arcata/es/birds/mm/m_murrelet.html).

***MM Biology-15: Monarch Butterfly Overwintering Aggregation Protection***

The draft EIR discloses several invasive plant species found within the Project areas, including approximately 200 acres of blue gum eucalyptus (*Eucalyptus globulus*), which has the potential to increase the intensity and severity of wildland fires on MidPen lands. The Project proposes to remove eucalyptus from locations where they could pose a fire hazard by using manual and mechanical methods, and herbicide applications to control re-sprouting.

Monarch butterflies (*Danaus plexippus*) are known to utilize eucalyptus trees for overwintering habitat. This species is currently experiencing a rapid decline in population abundance at these overwintering sites in California (USFWS 2020). The removal and thinning of eucalyptus trees within the Project areas has the potential to impact monarchs by eliminating or altering the habitat if overwintering aggregations are present.

To mitigate for potential impacts to monarch overwintering aggregations, the draft EIR proposes mitigation measure *MM Biology-15: Monarch Butterfly Overwintering Aggregation Protection* which provides pre-project surveys for and avoidance of monarch aggregations during the overwintering season, and a long-term tree planting strategy for native tree species suitable for monarchs.

*CDFW Comment 3:* On December 15, 2020, the USFWS determined that listing the monarch butterfly as endangered or threatened under the Endangered Species Act (ESA) is warranted. The monarch is now a candidate under ESA and during the candidacy period, is afforded the same protections as a federally listed species.

*Recommended Mitigation 3:* CDFW recommends the draft EIR be revised to reflect the new status of the monarch butterfly as federally proposed for listing as Endangered. Information on monarchs, including the Special-Status Assessment Report, can be found online at <https://www.fws.gov/savethemonarch/SSA.html>.

*CDFW Comment 4:* The draft EIR indicates that the removal of eucalyptus, and other invasive plant species, may include the use of herbicide applications to control re-sprouting. One of the primary drivers affecting the health of the migratory monarch populations is exposure to the widespread use of herbicides (USFWS 2020). To reduce impacts, the draft EIR proposes herbicide application be conducted according to Midpen's Integrated Pest Management Program (IPMP) Best Management Practices

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(BMP), which would prevent overspray and drift of herbicides onto special-status butterfly and moth species.

*Recommended Mitigation 4:* To further reduce impacts to monarchs from widespread herbicide use within the Project areas, CDFW recommends the draft EIR review and incorporate BMPs from the USFWS *Monarch Pesticide Supplemental Materials* (Revised July 2020) that are not already incorporated into the MidPen IPMP. The USFWS *Supplemental Materials for the Monarch (Danaus plexippus plexippus) Species Status Assessment Report* can be found online at <https://www.fws.gov/savethemonarch/SSA.html>.

## 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 California Natural Diversity Database (CNDDDB). The CNDDDB field survey form, online field survey form, and contact information for CNDDDB staff can be found at the following link: <https://wildlife.ca.gov/data/CNDDDB/submitting-data>. The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code section 711.4; Pub. Resources Code, section 21089). 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.

Thank you for the opportunity to comment on the Project's draft EIR. If you have any questions regarding this letter or for further coordination with CDFW, please contact Ms. Robynn Swan, Senior Environmental Scientist (Specialist), at (707) 576-2898 or [robynn.swan@wildlife.ca.gov](mailto:robynn.swan@wildlife.ca.gov); or Ms. Randi Adair, Senior Environmental Scientist (Supervisory), at (707) 576-2786 or [randi.adair@wildlife.ca.gov](mailto:randi.adair@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
BE74D4C93C604EA...  
Gregg Erickson  
Regional Manager  
Bay Delta Region

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cc: State Clearinghouse #2020049059

## **REFERENCES**

U.S. Fish and Wildlife Service. 2020. Monarch (*Danaus plexippus*) Species Status Assessment Report. V2.1 96 pp + appendices.