



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

**Sep 08 2020**

September 8, 2020

**STATE CLEARINGHOUSE**

Joseph Sidor  
County of Monterey Resource Management Agency  
1441 Schilling Place South 2<sup>nd</sup> Floor  
Salinas, California 93901

**Subject: PLN190276 Auerbach Jonathan & Jessika Auerbach Single-family  
Residence Project  
MITIGATED NEGATIVE DECLARATION (MND)  
SCH No. 2020080061**

Dear Mr. Sidor:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from County of Monterey Resource Management Agency for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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.

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

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<sup>1</sup> 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.

*Conserving California's Wildlife Since 1870*

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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, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 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 & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code may 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).

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Jonathan & Jessika Auerbach

**Objective:** The objective of the Project is to construct a residence in the unincorporated portion of Monterey County within Central Maritime Chaparral habitat. Primary Project activities include building a three-story 5,588 square foot residential unit, attached 564 square foot garage, detached 425 square foot guest house, 2,000 square foot photovoltaic system, underground propane tanks, and a paved driveway.

**Location:** 2700 Red Wolf Drive, Carmel-by-the-Sea, California 93923. Assessor's parcel number: 416-011-004-000. The location of the development area is 0.17 mile away from Gibson Creek.

**Timeframe:** Unspecified

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist County of Monterey Resource Management Agency 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 document.

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Based on the information provided in the MND, CDFW is concerned regarding potential impacts to the State candidate-listed as endangered Western bumble bee (*Bombus occidentalis*) and the State species of special concern western pond turtle (*Emys marmorata*). In order to adequately assess any potential impacts to biological resources, focused biological surveys should be conducted by a qualified wildlife biologist during the appropriate survey period(s) in order to determine whether any special-status species and/or suitable habitat features may be present within the Project area. Properly conducted biological surveys, and the information assembled from them, are essential to identify any mitigation, minimization, and avoidance measures and/or the need for additional or protocol-level surveys, especially in the areas not in irrigated agriculture, and to identify any Project-related impacts under CESA and other species of concern.

#### **I. Environmental Setting and Related Impact**

**Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or the United States Fish and Wildlife Service (USFWS)?**

#### **COMMENT 1: Western Bumble Bee (WBB)**

**Issue:** On June 28, 2019, the Fish and Game Commission published findings of its decision to advance WBB to candidacy as endangered. Pursuant to Fish and Game Code section 2074.6, CDFW has initiated a status review report to inform the Commission's decision on whether listing of WBB, pursuant to CESA, is warranted. During the candidacy period, consistent with CEQA Guidelines section 15380, the status of the WBB as an endangered candidate species under CESA (Fish & G. Code, § 2050 et seq.) qualifies it as an endangered, rare, or threatened species under CEQA. It is unlawful to import into California, export out of California, or take, possess, purchase, or sell within California, WBB and any part or product thereof, or attempt any of those acts, except as authorized pursuant to CESA. Under Fish and Game Code section 86, take means to hunt, pursue, catch, capture, or kill, or to attempt to hunt pursue, catch, capture, or kill. Consequently, take of WBB during the status review period may be prohibited unless appropriate authorization pursuant to CESA is obtained.

WBB have the potential to occur within and near the Project site. Suitable WBB habitat includes areas of grasslands and upland scrub that contain requisite habitat elements, such as small mammal burrows. WBB primarily nest in late February through late October underground in abandoned small mammal burrows, but may also nest under perennial bunch grasses or thatched annual grasses, under brush piles, in old bird nests, and in dead trees or hollow logs (Williams et al. 2014). Overwintering sites utilized by WBB mated queens include soft, disturbed soil

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(Goulson 2010), or under leaf litter or other debris (Williams et al. 2014). Therefore, ground disturbance and vegetation removal associated with Project implementation has the potential to significantly impact local WBB populations.

**Specific impact:** Without appropriate avoidance and minimization measures for WBB, potentially significant impacts associated with ground- and vegetation-disturbing activities associated with construction of the Project include loss of foraging plants, changes in foraging behavior, burrow collapse, nest abandonment, reduced nest success, reduced health and vigor of eggs, young and/or queens, in addition to direct mortality in violation of Fish and Game Code.

**Evidence impact is potentially significant:** WBB was once common throughout most of California; WBB populations are now largely restricted to high elevation sites in the Sierra Nevada and scattered observations along the California coast (Xerces Society 2018). Analyses by the Xerces Society (2018) suggest there have been sharp declines in relative abundance by 84%.

**Recommended Potentially Feasible Mitigation Measure(s)**

To evaluate potential impacts to WBB, CDFW recommends conducting the following evaluation of the Project site, incorporating the following mitigation measures into the MND prepared for this Project, and that these measures be made conditions of approval for the Project.

**Recommended Mitigation Measure 1: WBB Surveys**

CDFW recommends that a qualified biologist determine if suitable habitat is present within the Project site. If suitable habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for WBB and their requisite habitat features to evaluate potential impacts resulting from ground and vegetation disturbance associated with the Project.

**Recommended Mitigation Measure 2: WBB Take Avoidance**

If surveys cannot be completed, CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid and minimize take and potentially significant impacts. Any detection of WBB prior to or during Project implementation warrants consultation with CDFW to discuss how to avoid take, or if take cannot be avoided, what take authorization may be necessary to comply with CESA.

**COMMENT 2: Western pond turtle (WPT)**

**Issue:** WPT may potentially occur within the area of the Project site due to its close proximity to Gibson Creek. WPT are known to nest in the spring or early summer

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within 100 meters of a water body, although nest sites as far away as 500 meter have also been reported (Thomson et al. 2016).

**Specific impact:** Without appropriate avoidance and minimization measures for WPT, potentially significant impacts associated with Project activities could include nest reduction, inadvertent entrapment, reduced reproductive success, reduction in health or vigor of eggs and/or young, and direct mortality.

**Evidence impact is potentially significant:** The Project site is in close proximity of potential WPT habitat. Additionally, noise, vegetation removal, movement of workers, and ground disturbance as a result of Project activities have the potential to significantly impact WPT populations.

**Recommended Potentially Feasible Mitigation Measure(s)**

To evaluate potential impacts to WPT, CDFW recommends conducting the following evaluation of the Project site, editing the MND to include the following measures specific to WPT, and that these measures be made conditions of approval for the Project.

**Recommended Mitigation Measure 3: WPT Surveys**

CDFW recommends that a qualified biologist conduct focused surveys for WPT ten days prior to Project implementation. In addition, CDFW recommends that focused surveys for nests occur during the egg-laying season (March through August) and that any nests discovered remain undisturbed until the eggs have hatched.

**Recommended Mitigation Measure 4: WPT Relocation**

CDFW recommends that if any WPT are discovered at the site immediately prior to or during Project activities, they be allowed to move out of the area on their own or be moved by a qualified biologist with appropriate take authorization.

**II. Editorial Comments and/or Suggestions**

**Nesting birds:** CDFW encourages that Project implementation occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February through mid-September), 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 Codes as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys 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

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surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, 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 wildlife 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 that 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 compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

## **ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base 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 can be found at the following link: [http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB\\_FieldSurveyForm.pdf](http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf). The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: [http://www.dfg.ca.gov/biogeodata/cnddb/plants\\_and\\_animals.asp](http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp).

## **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

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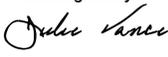
operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

## CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist County of Monterey Resource Management Agency 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 (MMRP) table which corresponds with recommended mitigation measures in this comment letter. Questions regarding this letter or further coordination should be directed to Aimee Braddock, Environmental Scientist, at [aimee.braddock@wildlife.ca.gov](mailto:aimee.braddock@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
FA83F09FE08945A...

Julie A. Vance  
Regional Manager

Attachment

ec: Office of Planning and Research  
State Clearinghouse

Aimee Braddock  
California Department of Fish and Wildlife

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## REFERENCES

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- Williams, P. H., R. W. Thorp, L. L. Richardson, and S .R. Colla. 2014. Bumble bees of North America: An Identification guide. Princeton University Press, Princeton, New Jersey. 208pp.
- Thomson, R. C., A. N. Wright, and H. Bradley Shaffer, 2016. California Amphibian and Reptile Species of Special Concern. California Department of Fish and Wildlife and University of California Press.
- Xerces Society for Invertebrate Conservation, Defenders of Wildlife, and Center for Food Safety. 2018. A petition to the state of california fish and game commission to list the Crotch bumble bee (*Bombus crotchii*), Franklin's bumble bee (*Bombus franklini*), Suckley cuckoo bumble bee (*Bombus suckleyi*), and western bumble bee (*Bombus occidentalis occidentalis*) as Endangered under the California Endangered Species Act. October 2018.

**Attachment 1**

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

**PROJECT: PLN190276 Auerbach Jonathan & Jessika Auerbach Single-family  
Residence Project**

**SCH No.: 2020080061**

<b>RECOMMENDED MITIGATION MEASURE</b>	<b>STATUS/DATE/INITIALS</b>
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: WBB Surveys	
Mitigation Measure 3: WPT Surveys	
Mitigation Measure 4: WPT Relocation	
<i>During Construction</i>	
Mitigation Measure 2: WBB Take Avoidance	