



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Ave
Fresno, California 93710
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



September 14, 2020

Governor's Office of Planning & Research

Sep 14 2020

STATE CLEARINGHOUSE

Michelle Overmeyer
Director of Planning and Innovation
Monterey-Salinas Transit
19 Upper Ragsdale, Suite 200
Monterey, California 93940

**Subject: MST SURF! Busway and Bus Rapid Transit Project
Notice of Preparation (NOP)
SCH No.: 2020080199**

Dear Ms. Overmeyer:

The California Department of Fish and Wildlife (CDFW) received an NOP from Monterey-Salinas Transit for the 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, 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.

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.

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: Monterey-Salinas Transit

Objective: The objective of the Project is to reduce inter-regional commute traffic on Highway 1 and expand the region's alternative transportation options. Primary Project activities include upgrading Marina Transit Exchange, new transit station (5th Street), two lanes of dedicated busway, new roundabout at California Ave and Highway 1, and a new station at Playa Ave in Sand City.

Location: The project is in Marina, Seaside, and Sand City, running parallel to Highway 1 and Fort Ord Dunes State Park. The Project will start at MST's Marina Transit Exchange at Reservation Road and De Forest Road, and end at Contra Costa Street in Sand City, totaling 6-miles.

Timeframe: Unspecified

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Monterey-Salinas Transit 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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There are many special-status resources present in and adjacent to the Project area. These resources may need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities or land use changes. The NOP does not indicate that there is potential for significant impacts. CDFW is concerned regarding potential impacts to special-status species including, but not limited to: the Federal endangered state threatened and California Rare Plant Ranked (CRPR) 1B.2 Monterey Gilia (*Gilia tenuiflora* ssp. *arenaria*), the Federal and State threatened and CRPR 1B.1 Menzies Wallflower (*Erysimum menziesii*), and the State species of special concern Legless Lizard (*Anniella pulchra*), Western Snowy Plover (*Charadrius alexandrinus nivosus*), Coast Horned Lizard (*Phrynosoma blainvillii*). In order to adequately assess any potential impacts to biological resources, focused biological surveys should be conducted by a qualified wildlife biologist/botanist 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: California Rare Plant Rank (CRPR) plant species

Issue: Several Special-status plants are known to occur in and near the Project area, including Menzies Wallflower (*Erysimum menziesii*), Monterey Gilia (*Gilia tenuiflora* ssp. *arenaria*) and other CRPR plant species (CDFW 2020). Review of aerial imagery indicates that some of the Project site is bordered by coastal dune habitat which is known to support these species and based on historical occurrences, is likely occupied with both plant species (CNPS 2020).

Specific impact: Without appropriate avoidance and minimization measures potential impacts to special-status plant species include inability to reproduce and direct mortality. Unauthorized take of species listed as threatened, endangered, or rare pursuant to CESA or the Native Plant Protection Act is a violation of Fish and Game Code.

Evidence impact would be significant: Many of the CRPR-listed plant species above are threatened with habitat loss and habitat fragmentation resulting from development, vehicle and foot traffic, and introduction of non-native plant species

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(CNPS 2020), all of which may be unintended impacts of the Project. Therefore, impacts of the Project have the potential to significantly impact populations of the species mentioned above.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to special-status plants associated with the Project, CDFW recommends conducting the following evaluation of the Project area and including the following mitigation measures as conditions of Project approval in the Project's CEQA document.

Recommended Mitigation Measure 1: Special-Status Plant Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment well in advance of project implementation, to determine if the Project area or its vicinity contains suitable habitat for special-status plant species.

Recommended Mitigation Measure 2: Focused Surveys

CDFW recommends that the Project area be surveyed for special-status plants 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.

Recommended Mitigation Measure 3: Special-Status Plant Avoidance

CDFW recommends special-status plant species be avoided whenever possible by delineation and observing a no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special-status plant species. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species.

Recommended Mitigation Measure 4: Special-Status Plant Take Authorization

If a State-listed plant species is identified during botanical surveys, consultation with CDFW is immediately warranted to determine if the Project can avoid take. However, if take cannot be avoided, take authorization would need to occur through issuance of an Incidental Take Permit (ITP) by CDFW to comply with Fish and Game Code section 1900 and California Code of Regulations, title 14, section 786.9, subdivision (b).

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COMMENT 2: Legless Lizard (LL)

Issue: LL have the potential to occur in the area (CDFW 2020). Northern California legless lizard are found primarily in areas with sandy or loose organic soils or where there is plenty of leaf litter (Zeiner et al., 1990d). Review of aerial imagery indicates that some of the Project site is bordered by coastal dune habitat which is known to support these species.

Specific impact: Without appropriate avoidance and minimization measures for LL potentially significant impacts associated with the Project's activities could include site abandonment which may result in reduced health or vigor of eggs and/or young, and/or direct mortality.

Evidence impact is potentially significant: Habitat loss is a primary threat to LL (Zeiner et al., 1990d). The Project area has the capacity to support the species and thus, the Project has potential to impact the species.

Recommended Potentially Feasible Mitigation Measure(s)

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

Recommended Mitigation Measure 5: LL Surveys

If suitable habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for LL and their requisite habitat features to evaluate potential impacts resulting from ground-disturbance.

Recommended Mitigation Measure 6: LL Avoidance

Avoidance whenever possible is encouraged via delineation however, a qualified biologist with the appropriate handling permit may relocate LL out of the project area into a nearby area with suitable habitat.

COMMENT 3: Other Special-Status Species

Issue: Project-related activities have the potential to impact other special-status species. Western Snowy Plover and Coast Horned Lizard has been documented to occur within and/or near the Project area (CDFW 2020). CDFW recommends that the CEQA document includes an impact analysis on all species with the potential to occur in the Project area including, but not limited to, Western Snowy Plover and Coast Horned Lizard.

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Specific impact: Without appropriate avoidance and minimization measures for the species mentioned above, potential significant impacts associated with the Project's construction include burrow or den collapse, nest destruction, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individual special-status wildlife species.

Evidence impact would be significant: As a result, ground disturbance resulting from development of the Project has the potential to impact habitat that supports special-status species, which may result in significant impacts to local populations of these species.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts of the Project to special-status species, CDFW recommends conducting the following assessment of the Project area, including the following mitigation measures, and requiring them as conditions of approval in the Project's CEQA document.

Recommended Mitigation Measure 7: Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment, well in advance of Project implementation, to determine if individual project areas or their immediate vicinity contain habitat suitable to support special-status plant or animal species, including, but not limited to, those mentioned above.

Recommended Mitigation Measure 8: Species-specific Surveys

If suitable habitat is present, CDFW recommends assessing presence/absence of special-status species by conducting surveys following recommended protocols or protocol-equivalent surveys. Recommended protocols vary by species. 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>).

Recommended Mitigation Measure 9: Take Avoidance

Detection of special-status plant or animal species within or in the vicinity of the Project area, warrants consultation with CDFW to discuss how to implement ground-disturbing activities and avoid or minimize take.

Recommended Mitigation Measure 10: Take Authorization

In the case of State-listed species, detection warrants consultation with CDFW to discuss how to avoid take, or if avoidance is not feasible, to acquire an ITP prior to ground-disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

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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 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

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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. 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: 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 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 Monterey-Salinas Transit 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.

Sincerely,

DocuSigned by:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

Attachment

A. MMRP for CDFW Recommended Mitigation Measures

cc: Office of Planning and Research, State Clearinghouse, Sacramento

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REFERENCES

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Attachment 1

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

PROJECT: MST SURF! Busway and Bus Rapid Transit Project

SCH No.: 2020080199

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: Special-Status Plant Habitat Assessment	
Mitigation Measure 2: Focused Surveys	
Mitigation Measure 4: Special-Status Plant Take Authorization	
Mitigation Measure 5: LL Surveys	
Mitigation Measure 7: Habitat Assessment	
Mitigation Measure 8: Species-specific Surveys	
Mitigation Measure 10: Take Authorization	
<i>During Construction</i>	
Mitigation Measure 3: Special-Status Plant Avoidance	
Mitigation Measure 6: LL Avoidance	
Mitigation Measure 9: Take Avoidance	