



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
1234 East Shaw Ave  
Fresno, California 93710  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

November 9, 2020

**Nov 10 2020**

## STATE CLEARINGHOUSE

Son Pham-Gallardo  
Associate Planner  
Monterey County Resource Management Agency—Planning  
1441 Schilling Place South 2<sup>nd</sup> Floor  
Salinas, California 93901

**Subject: Mata Enrique H & Connie M Trs  
MITIGATED NEGATIVE DECLARATION (MND)  
SCH No.: 2020100148**

Dear Mr. Pham-Gallardo:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from Monterey County Resource Management Agency—Planning for the Project pursuant to 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

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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.

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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, 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:** Son Pham-Gallardo; Mata Enrique H & Connie M Trs

**Objective:** The objective of the Project is to develop and construct a 4,208 square foot two-story residence with an attached 900 square foot garage. Primary Project activities include grading, construction of the home on slopes greater than 30 percent, removal of 18 Monterey pine trees (*Pinus radiata*) and working within 100 feet of environmentally sensitive habitat.

**Location:** 4053 Costado Road, Pebble Beach, California 93953; APN 008-091-005-000; 0.37-acre property

**Timeframe:** Unspecified

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist Monterey County Resource Management Agency—Planning 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. CDFW is concerned regarding potential impacts to special-status species including, but not limited to: the Federal endangered, State endangered, and California Rare Plant Ranked (CRPR) 1B.1 Monterey Clover (*Trifolium trichocalyx*); the Federal endangered and CRPR 1B.1 Yadon's rein orchid (*Piperia yadonii*); and the State candidate endangered Western bumble bee (*Bombus occidentalis*). 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, 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: Special-Status Plants

**Issue:** Several special-status plants are known to occur near the Project area, including Monterey Clover (*Trifolium trichocalyx*), Yadon's rein orchid (*Piperia yadonii*), and other special-status plant species (CDFW 2020). Review of aerial imagery indicates that some of the Project site is bordered by closed-cone coniferous forest habitat which is known to support these 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:** The 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 (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.

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**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 MND.

**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: Special-Status Plant 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 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) pursuant to Fish and Game Code section 2081 subdivision (b), and 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: 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 (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%.

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

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 5: 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 6: 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 cessation of planning for or continuing activities (whichever applies) and initiation of immediate consultation with CDFW to discuss how to avoid take.

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

**Federally Listed Species:** CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, the Monterey Clover. 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 ground-disturbing activities.

**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

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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 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](mailto: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

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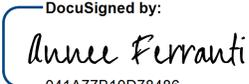
operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

## CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist Monterey County Resource Management Agency—Planning 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 (559) 243-4014 x243 or [aimee.braddock@wildlife.ca.gov](mailto:aimee.braddock@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
041A77B10D78486...  
Julie A. Vance  
Regional Manager

## Attachments

A. MMMRP for CDFW Recommended Mitigation Measures

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

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## REFERENCES

- California Native Plant Society, Rare Plant Program (CNPS). 2020. Inventory of Rare and Endangered Plants of California (online edition, v8-03 0.38). Website <http://www.rareplants.cnps.org>. Accessed November 02, 2020.
- California Department of Fish and Wildlife (CDFW), 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. California Department of Fish and Wildlife. March 20, 2018.
- CDFW. 2020. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed November 02, 2020.
- Goulson, D. 2010. Bumblebees: Behaviour, ecology, and conservation. Oxford University Press, New York. 317pp.
- 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.
- 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.

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**Attachment 1**

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

**PROJECT: Mata Enrique H & Connie M Trs, MND**

**SCH No.: 2020100148**

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