



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



June 03, 2024

Cindy Jacinth, Senior Planner  
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(805) 772-6261  
[BESScomments@morrobayca.gov](mailto:BESScomments@morrobayca.gov)

Subject: **Morro Bay BESS Project by Morro Bay Power Company, LLC (Project)  
Draft Environmental Impact Report (DEIR)  
State Clearinghouse No. 2022060083**

Dear Cindy Jacinth:

The California Department of Fish and Wildlife (CDFW) received a DEIR from The City of Morro Bay, as Lead Agency, 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, 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. While the comment period may have ended, CDFW respectfully requests that the City of Morro Bay still consider our comments.

## **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 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 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).

**Unlisted Species:** Species of plants and animals need not 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, as specified in the CEQA Guidelines section 15380, CDFW recommends it be fully considered in the environmental analysis for the Project.

As a responsible agency, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (e.g., CEQA), focusing specifically on project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Morro Bay Power Company LLC

**Objective:** The proposed Project includes three components: (1) construction and operation of a 600-megawatt (MW) Battery Energy Storage System (BESS) on approximately 24 acres of the Project Site (BESS Site); (2) demolition and removal of the existing Power Plant building and stacks; and (3) adoption of a Master Plan that would change the land use designation of the BESS Site from Visitor Serving Commercial to General (Light) Industrial.

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The BESS would provide power to utility customers by interconnecting to the existing Pacific Gas & Electric (PG&E) switchyard located east of the Project parcel and Project site. The proposed BESS includes three enclosed buildings with fire protection systems to house the batteries. Each building would be approximately 350 feet by 260 feet, for a total building area of 91,000 square feet (sf). The buildings would be two stories and 30 feet in height. Additional equipment installed on the roof of the buildings may extend up to an additional 2-6 feet in height; this equipment would be screened from views using either mesh or slatted screens. Each building would require approximately 1,000 to 1,500 pilings to a cement depth of 75 feet. Each building would contain approximately 2,400 battery racks and be surrounded by approximately 60 Power Conversion Systems (PCSs) composed of inverters and transformers to convert the direct current to alternating current. The PCSs would be located on concrete pads outside the buildings. The BESS would also include three substations with transformers, a transmission line (Gen-tie) connecting to the existing dead-end structures on the southwestern side of the existing PG&E switchyard (the final structures before the connection with the substation), water supply system improvements, and internal access roads.

**Location:** The approximately 95-acre Morro Bay Power Plant property (Project parcel) (Assessor's Parcel Number [APN] 066-331-046) is located at 1290 Embarcadero, south of State Route 1 (SR 1)/Cabrillo Highway and north of Embarcadero in the City of Morro Bay.

The Project is surrounded by PG&E property (switchyards) and State Route 1 (SR-1) to the northeast; the Embarcadero, commercial uses and a marina to the southwest; Morro Creek, which is approximately 340-feet to the north of the Project site and flows into the ocean, a recreational vehicle (RV) park on the opposite side of Morro Creek, and temporary lodging facilities (hotel and motel) to the north; and Coleman Park, the Morro Bay harbor walk, and dune habitat associated with Morro Rock beach to the west.

**Timeframe:** Undetermined but anticipated that construction of the BESS will take 36 to 48 months.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist The City of Morro Bay in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, indirect, and cumulative impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the CEQA document.

Aerial imagery of the Project site and its surroundings show the area contains Arroyo Willow thickets, ice plant mats, Silver Dune Lupine scrub, mixed dune habitats, ornamental vegetation, ruderal habitat, as well as disturbed and developed areas.

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Based on a review of the Project description, California Natural Diversity Database (CNDDDB) records, and the surrounding habitat, several special-status species could potentially be impacted by Project activities.

Currently, the DEIR acknowledges that the Project area is within the geographic range of several special status animal species and proposes specific mitigation measures to reduce impacts to less than significant. CDFW has concerns about the ability of some of the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for a special status animal species, specifically the State special animal and federal candidate Monarch (butterfly)-California overwintering population (*Danaus Plexippus plexippus* pop.1). CDFW also has concerns about the ability of some of the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for special status plant species, including the California Rare Plant Rank 1B.2 Blochman's leafy daisy (*Erigeron blochmaniae*). Finally, CDFW has concerns with potential impacts to migratory and non-migratory nesting birds.

### **Monarch-California Overwintering Population**

The DEIR notes that Monarch are known to roost in the eucalyptus trees planted within the southeast corner of the Project, although these aggregations are thought to be fall roosts, rather than winter roosts. Monarchs are a federal Endangered Species Act (FESA) candidate species. Monarchs can be found overwintering along the California coast in groves of trees primarily dominated by non-native eucalyptus (*Eucalyptus spp.*), with additional native species including Monterey pine (*Pinus radiata*) and Monterey cypress (*Hesperocyparis macrocarpa*) (Griffiths & Villablanca 2015; Pelton et al. 2016). Overwintering groves have specific microclimatic conditions that support Monarch populations (Fisher et al. 2018).

During the last three decades, the western migratory Monarch population that overwinters along the California coast has declined by more than 99% (USFWS 2023). Habitat loss and fragmentation, including grove senescence, are among the primary threats to the population (Thogmartin et al. 2017). Monarch overwintering sites have specific microclimate conditions that are influenced by the configuration of trees and other foliage near the site (Griffiths & Villablanca 2015). Alteration of the site and surrounding areas could impact microclimate conditions, thereby reducing the suitability of the site for Monarchs (Weiss et al. 1991).

The DEIR notes that there is suitable habitat within the Project area, and that up to six Monterey cypress and 17 Monterey pine trees are slated for removal during project activities with no mitigation measures currently proposed. As the Project has the potential to impact Monarch and the species overwintering habitat with no mitigation measures proposed for the species, discussion with CDFW is recommended well in advance of any planned removal of Monarch overwintering habitat to determine

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appropriate avoidance and minimization measures including adequate implementation of no-disturbance buffers. Additionally, consultation with USFWS may be necessary to mitigate for potential impacts.

### **Other Special-Status Plant Species**

Mitigation Measure MM BIO-1 (i) states that, "If Blochman's leafy daisy and/or any other special-status plant species is (are) observed during the botanical survey described above, the Project Applicant shall reconfigure and redesign the development footprint to avoid impacts to special-status plants to the maximum extent feasible. Avoidance shall be accomplished by installation of high visibility fencing around areas that are occupied by Blochman's leafy daisy and/or other special-status plant species. A qualified botanist shall oversee, direct, and generally facilitate fence installation and will monitor the fencing periodically to ensure that it remains intact and is effective for the intended avoidance throughout the duration of construction activities within this location. After construction within this area is complete, the fencing may be removed by construction personnel under the supervision of the qualified botanist."

CDFW concurs with implementation of a no-disturbance buffer but recommends special status plant species, such as Blochman's leafy daisy, be avoided whenever possible by delineation and observation of a minimum 50-foot no-disturbance buffer from the outer edge of the special status 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.

### **Nesting Birds**

Mitigation Measure Bio-1(g) states that: "The Project Applicant and developer shall ensure implementation of the following avoidance and minimization measures prior to and during vegetation removal, ground disturbing activities, and construction of the BESS Facility: Above-ground electrical transmission lines shall be designed using industry best practices to minimize bird electrocution hazards. These may include, but are not limited to, adequate phase-to-phase or phase-to-ground separation and/or appropriate insulation of components. Where insulation is not feasible near perching locations, bird deterrent materials may be used as an alternative. If at any time during project operations special-status bird species are observed within the work area, work shall be stopped and/or redirected to an area that would not pose a danger to the bird(s). Special-status birds will be monitored and upon its/their flight out of the work area, work activities may resume. If ground-disturbing and/or noise-producing activities occur within nesting bird season (i.e., February 1 through August 31), the following conditions shall be implemented to protect all nesting birds during project activities: A pre-construction nesting bird survey shall be conducted by a qualified avian biologist no

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more than 14 days prior to initiation of project activities. The survey shall be conducted within the Project Site and include a 100-foot buffer for passerines and a 500-foot buffer for raptors. The survey shall be conducted by a biologist familiar with the identification of avian species known to occur in the region and shall focus on trees, vegetated areas, and other potential nesting habitat within the vicinity of the Project Site. If active nests are found, an appropriate avoidance buffer (typically 100 feet for passerine species and 500 feet for raptors) will be determined and demarcated by the biologist with high visibility material located within or adjacent to the Project Site. The nest buffer may be reduced based on the species, activities that occurred Executive Summary Draft Environmental Impact Report ES-15 Impact Mitigation Measure (s) Residual Impact prior to and/or during nest building, ambient conditions (e.g., existing elevated noise due to proximity to a roadway/highway), and the biologist's professional opinion and City's concurrence. All project personnel shall be notified as to the existence of the exclusionary buffer zone and no project activities shall occur within the buffer until the avian biologist has confirmed that breeding/nesting is complete, and the young have fledged the nest. This buffer may be reduced as described above. The nest shall be monitored by the qualified avian biologist and if the monitoring biologist observes signs of distress, then they shall stop construction work within the buffer and coordinate with the City and/or one or more regulatory agencies (i.e., CDFW and USFWS) to establish additional protection measures to ensure avoidance of nest abandonment prior to the re-start of project activities within the exclusionary buffer".

CDFW does not concur that Mitigation Measure MM BIO-1(g) is sufficient to mitigate impacts to nests during the bird breeding season, particularly for the portions of the measure which directs surveys no more than 14 days prior to the start of construction, defines the breeding season as ending on August 31, and allows for the placement of a 100-foot buffer for non-listed avian species. As such, CDFW recommends the following:

### **Recommended Mitigation Measure 1: Nesting Bird Surveys Prior to Construction**

If ground-disturbing activities occur during the nesting bird season (February 1 – September 15), CDFW recommends that a qualified biologist conduct pre-activity surveys for active nests no more than one week prior to the start of ground 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 work site to identify nests and determine their status. A sufficient area means any area potentially affected by a project. In addition to direct impacts (i.e., nest destruction), noise, vibration, odors, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends a

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qualified biologist conduct a survey to establish a behavioral baseline of all identified nests.

### **Recommended Mitigation Measure 2: Nesting Bird Monitoring and/or Avoidance Buffer**

Once construction begins, CDFW recommends a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends the work causing that change to cease and that CDFW be consulted 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 that the birds have fledged and are no longer reliant upon the nest or 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 construction area 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.

### **Editorial Comments and/or Suggestions**

**Federally Listed Species:** CDFW also recommends consulting with the USFWS on potential impacts to Monarch. Take under 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.

**Lake and Streambed Alteration:** Based on the information provided in the DEIR, the Project site is located adjacent to Morro Creek and the Morro Bay Estuary. The DEIR notes that no Project-related activities are anticipated to occur within these features subject to CDFW's regulatory authority pursuant to Fish and Game Code Section 1600 et seq. CDFW would like to note that 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 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

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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.

## **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. €). 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://nrm.dfg.ca.gov/fieldSurvey/default.aspx>. 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 operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).



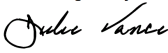
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## CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist the City of Morro Bay in identifying and mitigating Project impacts on biological resources.

If you have any questions, please contact Ren Cotter, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 767-0956 or by electronic mail at [Ren.Cotter@wildlife.ca.gov](mailto:Ren.Cotter@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
FA83F09FE08945A...

Julie A. Vance  
Regional Manager

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**Attachment 1**

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

**PROJECT: Morro Bay BESS Project**

**SCH No.: 2022060083**

<b>RECOMMENDED MITIGATION MEASURE</b>	<b>STATUS/DATE/INITIALS</b>
<i>Before Disturbing Soil or Vegetation</i>	
<b>Nesting birds</b>	
Recommended Mitigation Measure 1: Nesting Bird Surveys Prior to Construction	
<i>During Construction</i>	
<b>Nesting birds</b>	
Recommend Mitigation Measure 2: Nesting Bird Monitoring and/or Avoidance Buffer	