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Governor's Office of Planning & Research

Aug 18 2022

STATE CLEARINGHOUSE

August 18, 2022

Kim Bobic, Senior Project Manager
Judicial Council of California
455 Golden Gate Avenue
San Francisco, California 94102
Kim.Bobic-T@jud.ca.gov

**Subject: New Fort Ord Courthouse (Project)
Notice of Preparation (NOP) of an Environmental Impact Report (EIR)
State Clearinghouse No.: 2022070304**

Dear Kim Bobic:

The California Department of Fish and Wildlife (CDFW) received a NOP from the Judicial Council of California for the above-referenced 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 exercise of our own regulatory authority under the Fish and Game Code. While the comment period may have ended, CDFW would appreciate if you will 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 the trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically

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.

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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.

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, 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: Judicial Council of California

Objective: The Project proposes to construct a new courthouse on a former Fort Ord Military Base property. The proposed 3-story, approximately 83,000-gross-square-foot courthouse would include seven multi-purpose courtrooms, chambers, central holding, jury assembly, self-help, and administrative support areas. The courthouse would be constructed near the center of a 5-acre parcel, flanked by parking to the east and the west. The proposed Project includes approximately 280 surface parking spaces for staff and the public, including jury parking and a secured parking area for judicial officers. Solar power generation will be planned at 150 of the parking spaces together with the corresponding battery energy storage system.

Location: The Project site is located on the south side of Divarty Street, between 1st and 2nd Avenues.

Timeframe: N/A.

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COMMENTS AND RECOMMENDATIONS

Monterey gilia and Seaside bird's-beak: Special-status species have been documented in the Project area vicinity (CDFW 2022). Records from the California Natural Diversity Database (CNDDDB) demonstrate that special-status species may include, but not be limited to, the State threatened, federally endangered, and California Rare Plant Ranked (CRPR) 1B.2 Monterey gilia (*Gilia tenuiflora* ssp. *arenaria*), and the State endangered and CRPR 1B.1 seaside bird's-beak (*Cordylanthus rigidus* ssp. *littoralis*). CDFW advises that protocol-level surveys, the parameters of which were designed to optimize detectability, be conducted as part of the biological studies for the EIR to reasonably determine if Project activities will impact State-listed species. Surveys need to be floristic and utilize a reference site to maximize detection potential and need to be conducted over multiple seasons to increase the reliability of the results. In the absence of surveys, the applicant may assume presence within the Project site and immediately focus on the acquisition of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b). Absent obtaining a 2081 ITP, full avoidance measures are necessary to avoid all take as a result of Project ground-disturbing activities. CDFW recommend the Project proponent contact us as soon as possible for early consultation relative to acquisition of an ITP to help streamline the permit application and acquisition process.

Cumulative Impacts: CDFW recommend that a cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the Project, including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the project, even if those impacts are relatively small (i.e. less than significant). CDFW recommends cumulative impacts be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and be focused specifically on the resource, not the Project. An appropriate resource study area identified and utilized for this analysis is advised. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

Nesting Birds: CDFW encourages implementation of Project construction activities during the bird non-nesting season. However, if ground-disturbing activities must occur during the breeding season (i.e., February through mid-September), CDFW recommends pre-construction surveys for nesting birds and an appropriate no-disturbance buffer be implemented around active nests. The Project proponent 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.

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Federally Listed Species: CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, Monterey gilia. 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.

CDFW is available to meet with you to discuss potential impacts and possible mitigation measures for biological resources. If you have any questions, please contact Jim Vang, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 580-3203, or by electronic mail at Jim.Vang@wildlife.ca.gov.

Sincerely,



Julie A. Vance
Regional Manager

ec: United States Fish and Wildlife Service
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California Department of Fish and Wildlife
Jeff Cann; Jeff.Cann@wildlife.ca.gov

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REFERENCES

CDFW. 2022. Biogeographic Information and Observation System (BIOS).
<https://www.wildlife.ca.gov/Data/BIOS>.