



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



May 22, 2023

Governor's Office of Planning & Research

May 22 2023

STATE CLEARING HOUSE

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)
Draft Environmental Impact Report (DEIR)
State Clearinghouse No.: 2022070304**

Dear Kim Bobic:

The California Department of Fish and Wildlife (CDFW) received a draft Environmental Impact Report (DEIR) from the Judicial Council of California 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.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may

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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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).

In this role, 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: Judicial Council of California

Objective: The Project proposes to construct a new courthouse on the 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. Per Project information, construction will be divided into two phases. The first phase is anticipated in May 2025 and the second in June 2026 with completion by July 2028.

Location: The Project site is located in the City of Seaside, southwest of the intersection of Divarty Street and 2nd Avenue.

Timeframe: Unspecified

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COMMENTS AND RECOMMENDATIONS

CDFW previously commented on the Notice of Preparation (NOP) for the Project in a letter dated August 18, 2022. Our August 18, 2022 letter (attached) provided recommendations for listed plant and wildlife species, and concerns for Project impacts. CDFW recognizes that some of the recommendations from the letter were included in the DEIR for the Project. However, CDFW notes that the following recommendations and mitigation measures from our NOP comment letter have not been included in the DEIR. Overall, CDFW is concerned that the necessary biological survey work has not been completed to support the conclusions reached in the DEIR and that the appropriate biological survey work is being postponed or may not be completed as needed to adequately analyze potentially significant impacts and to disclose those to the public. CDFW is concerned that our recommendations for the following species have not been incorporated in the DEIR for this project and requests that the Judicial Council of California conduct the recommended surveys and analyses from the NOP comment letter, perform an analysis of potentially direct, indirect, and cumulative impacts based upon the findings of the required surveys, and include the findings in either a recirculated DEIR or in the Final Environmental Impact Report (FEIR):

- All flowering annual plants that could be present in the project area but with a particular focus on:
 - seaside's birds beak (*Cordylanthus rigidus* ssp. *littoralis*),
 - Monterey gilia (*Gilia tenuiflora* ssp. *arenaria*),
 - Menzies' wallflower (*Erysimum ammophilum*)
- the State candidate-listed as endangered Crotch bumble bee (*Bombus crotchii*).

Proposed Mitigation Measures 4.3-1a and 4.3-1b are not sufficient to support the conclusion of a less than significant impact to sensitive plant species. Worker Environmental Awareness Training and Avoidance measures performed just prior to and/or during construction are not sufficient to identify presence of CESA-listed, Federal Endangered Species Act (FESA) listed, and other rare plant species. Absent full protocol plant surveys conducted prior to the finalization of the CEQA process, there is no inventory data upon which to identify or analyze potentially significant impacts or obtain the required state and federal permits that may be required for this project's construction. Without a scientifically rigorous survey effort upon which to perform CEQA analysis, there is no opportunity, as well, to identify appropriate avoidance, minimization, and mitigation measures including the inability to identify appropriate alternatives to the project site plans to avoid impacts to sensitive plants.

Insufficient plant surveys were completed as part of the biological technical studies conducted in support of the DEIR. Only one reconnaissance survey was completed in February 2022, well outside of the spring, summer, and fall blooming periods for all the plants listed in Table 4.3-2. One reconnaissance survey conducted during the winter period for CESA and FESA listed plant surveys is not sufficient to draw conclusions.

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CDFW continues to recommend, as is cited in our NOP response letter, that full CDFW protocol, floristic, and repeated plant surveys be conducted in order to adequately inform the CEQA analysis contained in the DEIR.

In addition to our request that our recommendations contained in the attached comments on the NOP for this project be implemented, CDFW has the following comments and recommendations on specific mitigation measures to be included in the FEIR.

Burrowing Owl (*Athene cunicularia*)

CDFW recommends that additional burrowing owl (BUOW) mitigation measures be included in the FEIR to minimize potentially significant impacts to this species. BUOW could potentially be using the site between the time surveys were conducted and the time the Project will be constructed. Potentially significant direct impacts from construction activities may result in burrow collapse, inadvertent entrapment, nest abandonment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

CDFW recommends no-disturbance buffers, as outlined in the “Staff Report on Burrowing Owl Mitigation” (CDFG 2012), be implemented prior to and during any ground-disturbing activities. Specifically, CDFW’s Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

No-disturbance buffers differ regarding time of year and level of disturbance, please refer to the table below.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

* meters (m)

Crotch Bumble Bee (*Bombus crotchii*)

The Crotch bumble bee (CBB) has the potential to occur within the Project site. The CBB range includes the Pacific coast (Xerces Society, 2018) and was once common throughout most of central and southern California. However, it now appears to be absent from most of their range. (Hatfield et al. 2014). Analyses by the Xerces Society

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et al. (2018) suggest there have been sharp declines in relative abundance by 98% and persistence by 80% over the last ten years.

Suitable CBB habitat includes areas of grasslands and upland scrub that contain requisite habitat elements, such as small mammal burrows. Per Google aerial photography and Google Streetview, grassland habitat along with some downed wood and some smaller brush/vegetation is present within and adjacent to Project limits. CBB 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; Hatfield et al. 2015). Overwintering sites utilized by CBB 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 activities have the potential to significantly impact local CBB populations.

If ground-disturbing activities will occur during the overwintering period (October through February), consultation with CDFW is warranted to discuss how to implement project activities and avoid take. Any detection of CBB prior to or during project implementation warrants consultation with CDFW to discuss how to avoid take or, if avoidance is not feasible, to acquire an Incidental Take Permit (ITP) prior to ground disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

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. (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. 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.)

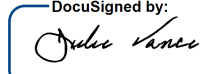
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CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist the Judicial Council of California 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 and Reporting Program (MMRP) table which corresponds with recommended mitigation measures in this comment letter. Questions regarding this letter or further coordination should be directed to Evelyn Barajas-Perez, Environmental Scientist at (805) 503-5738 or Evelyn.Barajas-Perez@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

Attachments

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

Evelyn Barajas-Perez
California Department of Fish and Wildlife

Kim Bobic, Senior Project Manager
Judicial Council of California
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REFERENCES

- California Department of Fish and Game (CDFG). 2012. Staff Report on Burrowing Owl Mitigation. California Department of Fish and Game. March 7, 2012
- Goulson, D. 2010. Bumblebees: behaviour, ecology, and conservation. Oxford University Press, New York. 317pp.
- Hatfield, R, S. Colla, S. Jepsen, L. Richardson, R. Thorp, and S. Foltz Jordan. 2014. Draft IUCN Assessments for North American *Bombus* spp. for the North American IUCN Bumble Bee Specialist Group. The Xerces Society for Invertebrate Conservation, www.xerces.org, Portland, OR.
- Hatfield, R., Jepsen, S., Thorp, R., Richardson, L. & Colla, S. 2015. *Bombus crotchii*. The IUCN Red List of Threatened Species.
- 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.

Attachment 1**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)****PROJECT: New Fort Ord Courthouse****SCH No.: 2022070304**

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



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GAVIN NEWSOM, Governor
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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.

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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.

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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).

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Proponent: Judicial Council of California

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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
Patricia Cole; patricia_cole@fws.gov

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>.