



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

September 11 2023

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STATE CLEARINGHOUSE

Christy Sabdo, AICP, Associate Planner
City of Monterey
570 Pacific Street
Monterey, CA 93940
sabdo@monterey.org
(831) 646-3758

Subject: City of Monterey 2031 General Plan Update (Project)
Notice of Preparation (NOP)
SCH No.: 2023080034

Dear Christy Sabdo:

The California Department of Fish and Wildlife (CDFW) received a notice of preparation (NOP) for a Draft Environmental Impact Report (DEIR) from the City of Monterey for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

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. While the comment period may have ended, CDFW would appreciate if you would 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 & Game Code, Section 711.7, subd. (a) & 1802; Pub. Resources Code, Section 21070; CEQA Guidelines Section 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., Section 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing

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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, Section 21069; CEQA Guidelines, Section 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 & Game Code, Section 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 & Game Code, Section 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: City of Monterey

Objective: The Proposed Project involves updates to the Housing, Safety, Land Use, and Circulation Elements of the City of Monterey General Plan. The Proposed Project is both a policy document and an implementation tool for implementing the City's General Plan. It contains goals, policies, and programs to guide future housing development of up to 5,802 units within the approximately 8.7-square-mile Planning Area that encompasses the entire city. Implementation will include amendments to the City's Municipal Code.

Location: City of Monterey

Timeframe: Unspecified

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COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City of Monterey 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 for this Project.

The NOP indicates that the DEIR for the Project will consider potential environmental effects of the proposed Project to determine the level of significance of the environmental effect and will analyze these potential effects to the detail necessary to make a determination on the level of significance. The DEIR will also identify and evaluate alternatives to the proposed Project. When a DEIR is prepared, the specifics of mitigation measures may be deferred, provided the lead agency commits to mitigation and establishes performance standards for implementation.

Special-Status Species

Based on aerial imagery and species occurrence records from the California Natural Diversity Database (CNDDDB) (CDFW 2023a), the proposed Planning Area is known to and/or has the potential to support special-status species, and these resources need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities. CDFW is concerned regarding potential impacts to special status species including, but not limited to, the State endangered and federally endangered Monterey clover (*Trifolium trichocalyx*), the State and federally endangered Hickman's cinquefoil (*Potentilla hickmanii*), the State endangered seaside bird's-beak (*Cordylanthus rigidus ssp. Littoralis*), the State candidate endangered Western bumble bee (*Bombus occidentali*), the State threatened Monterey gilia (*Gilia tenuiflora ssp. Arenaria*), the State threatened and fully protected California black rail (*Laterallus jamaicensis coturniculus*), and the species of special concern American badger (*Taxidea taxus*), burrowing owl (*Athene cunicularia*), Northern California legless lizard (*Anniella pulchra*), Western snowy plover (*Charadrius nivosus*), Monterey shrew (*Sorex ornatus salarii*), and yellow rail (*Coturnicops noveboracensis*).

Special-Status Plant Species

There is potential for multiple special status plant species to occur within the Planning Area (CDFW 2023a). CDFW recommends that the DEIR for the General Plan update include a cumulative impacts analysis of the reasonably foreseeable future projects to be implemented within the Plan Area on all special-status plant species. CDFW also recommends that each project site for projects implemented within the Planning 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 Natural Communities"

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(<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>) during biological technical studies completed in support of the future CEQA documents tiered from this General Plan. CDFW recommends that the plant surveys be floristic and utilize a known reference site for each plant listed above in order to provide for a high level of confidence in the effort and results.

CDFW recommends special status plant species be avoided whenever possible by delineating 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. If a State or federally listed plant species is identified during botanical surveys, it is recommended that consultation with CDFW and/or the USFWS be conducted to determine permitting needs.

Western bumble bee (*Bombus occidentali*)

Western bumble bee (WBB) has the potential to be found in most locations on or within the vicinity of the Planning Area. WBB was once commonly found in the western United States, Canada, North Dakota, and throughout Alaska, however, it now appears to be absent from most of these areas as there has been a 93% decline in occupancy in the last two decades. WBB primarily nest in late February through late October underground in abandoned small mammal burrows but may be found 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 WBB mated queens include soft, disturbed soil (Goulson 2010), or under leaf litter or other debris (Williams et al. 2014). Therefore, potential ground disturbance and vegetation removal associated with future projects implemented under this General Plan may significantly impact local WBB populations.

CDFW recommends that the DEIR for the General Plan update include a cumulative impacts analysis of the reasonably foreseeable future projects to be implemented within the Plan Area. In addition, CDFW recommends that a qualified biologist conduct focused surveys for WBB and their requisite habitat features using the CDFW survey protocol during their colony active period (highest detection probability) from April to September (CDFW 2023b) as part of the biological technical studies conducted in support of the future CEQA documents for projects tiered from this General Plan. CDFW recommends that the future CEQA documents then evaluate impacts resulting from potential ground- and vegetation-disturbing activities that may result from any future project. If WBB need to be captured or handled as part of the survey effort, please note that a 2081(a) Memorandum of Understanding (MOU) with CDFW will be needed (CDFW 2023b).

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California black rail (*Laterallus jamaicensis coturniculus*)

Occurrences of California black rail (CBR) have been documented within the Planning Area according to the California Natural Diversity Database (CNDDDB) (CDFW 2023a). The majority of recorded populations for this species have been found from San Pablo Bay to southern California and Arizona. CBR live predominately near water in marsh areas where plants such as pickleweed, gumplant, alkali bulrush, and cattails are found (Evens et al. 1991; Conway and Sulzman 2007). They typically place their nests a couple of inches above shallow water, on moist soil, or among dense vegetation (Spautz et al. 2005).

CDFW recommends that a desk level habitat assessment for CBR be conducted by a qualified biologist knowledgeable with CBR as part of the DEIR prepared for this General Plan update and that any potentially suitable habitat areas be included as part of a cumulative impacts analysis conducted for this species for the reasonably foreseeable future projects to be tiered from this General Plan. CDFW then recommends that future project sites be surveyed by a qualified biologist for the potential presence of this species as part of the biological technical studies conducted in support of the future CEQA document. If the species is found, CDFW should be consulted to identify and implement appropriate avoidance and minimization measures to avoid any impacts to this species. CBR is fully protected, therefore, no “take”, incidental or otherwise, can be authorized by CDFW.

States Species of Special Concern

American badger (*Taxidea taxus*), burrowing owl (*Athene cunicularia*), Northern California legless lizard (*Anniella pulchra*), Western Snowy Plover (*Charadrius nivosus*), Monterey shrew (*Sorex ornatus salarius*), and yellow rail (*Coturnicops noveboracensis*) have the potential to occur within the General Plan Planning area. These species have been documented to occur within and surrounding the Planning area, which supports requisite habitat elements (CDFW 2023a). Each of these species should be included in the cumulative impacts analysis conducted as part of this General Plan update with specific recommendations for focused surveys conducted by a qualified biologist for future projects tiered from this General Plan.

Nesting birds

CDFW recommends that all projects tiered from this General Plan occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February 15 through September 15), each future project applicant is responsible for ensuring that implementation of their project does not result in a violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

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To evaluate future project-related impacts on nesting birds, CDFW recommends that a qualified biologist conduct an assessment of nesting habitat during biological surveys in support of each project's CEQA document, and then 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 each future project 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, 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 each future 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 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 areas 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.

Cumulative Impacts

Given that a General Plan serves primarily as a planning tool and that future project-level CEQA documents are expected to be tiered from it, CDFW recommends that a cumulative impact analysis be conducted for all potential biological resources that will either be significantly or potentially significantly impacted by implementation of the General Plan, 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 any future project, even if those impacts are expected to be 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.

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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, Section 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

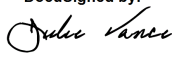
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, Section 753.5; Fish & G. Code, Section 711.4; Pub. Resources Code, Section 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist the City of Monterey in identifying, analyzing, and mitigating the implementation of the General Plan's 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:

FA83E09FE08945A...
Julie A. Vance
Regional Manager

ec:

CESA R4CESA@wildlife.ca.gov

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REFERENCES

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<https://www.wildlife.ca.gov/Data/BIOS>.
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Attachment 1

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

PROJECT: City of Monterey 2031 General Plan Update (Project)

SCH No.: 2023080034

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation measure: Special-Status Plant Species	
Botanical Surveys	
Mitigation measure: Western bumble bee	
Western bumble bee Habitat Assessment	
Mitigation measure: California black rail	
California black rail Habitat Assessment	

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Mitigation measure: States Species of Special Concern	
State Species of Special Concern Habitat Assessment	
Mitigation: Nesting Birds	
Nesting Bird Habitat Assessment	