



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



Governor's Office of Planning & Research

April 16 2024

April 15, 2024

STATE CLEARINGHOUSE

Christy Sabdo, AICP, Associate Planner
City of Monterey
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(831) 646-3758

**Subject: City of Monterey 2031 General Plan Update (Plan)
Draft Environmental Impact Report (DEIR)
SCH No.: 2023080034**

Dear Christy Sabdo:

The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Report (DEIR) from the City of Monterey for the Plan 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 Plan that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Plan 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 the City of Monterey 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, future projects tiered from this Plan 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 future projects tiered from this Plan 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.

Fully Protected Species: CDFW has jurisdiction over fully protected species of birds, mammals, amphibians and reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

- Take is for necessary scientific research,
- Efforts to recover a fully protected, endangered, or threatened species, live capture, and relocation of a bird species for the protection of livestock, or
- They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Additionally, specified types of infrastructure projects may be eligible for an incidental take permit (ITP) for unavoidable impacts to fully protected species if certain conditions are met (see Fish & G. Code §2081.15). Project proponents should consult with CDFW early in the project planning process if an ITP may be pursued for a project.

PLAN DESCRIPTION SUMMARY

Proponent: City of Monterey

Objective: The Proposed Plan involves updates to the Housing, Safety, Land Use, and Circulation Elements of the City of Monterey General Plan. The proposed Plan 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: The Plan area includes all land within Monterey City limits

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Timeframe: Unspecified

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City of Monterey in adequately identifying and/or mitigating the Plan'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 CEQA document prepared for this Plan.

Based on aerial imagery and species occurrence records from the California Natural Diversity Database (CNDDDB) (CDFW 2024), the proposed Plan 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.

Currently, the DEIR acknowledges that the Plan area is within the geographic range of several special status animal species and provides specific recommendations and measures for future projects tiered from this Plan to incorporate within their CEQA analyses. CDFW has concerns about the ability of some the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take of the State threatened and fully protected California black rail (*Laterallus jamaicensis coturniculus*). 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 of special status plant species.

California black rail

As noted in CDFW's Notice of Preparation (NOP) comment letter for the Plan, and submitted to the City of Monterey on September 11, 2023, California black rail (CBR) has the potential to be present within the Plan area, and survey and mitigation measure recommendations were provided for incorporation in the DEIR. CDFW would like to note that CBR was not included within the DEIR and no mitigation measures were proposed for the species. As such, CDFW reiterates the recommendations in the NOP to have a qualified biologist survey for the potential presence of CBR as part of the biological technical studies conducted in support of any projects tiered from this Plan that might be located within suitable habitat for the species. Additionally, CDFW recommends language be included in the DEIR to consult with CDFW if the species is found during these surveys.

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Special-Status Plant Species

The DEIR states on MM-BIO-4, “If necessary pursuant to the results of surveys conducted under Mitigation Measure BIO-1, the work area shall be modified to the extent feasible to avoid indirect or direct impacts on special-status plants. Special-status plant species shall 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 complete avoidance of special-status plants is not feasible, at a minimum the special-status plant species shall be relocated on-site, at least 20 feet away from construction directly relating to the project. All site preparation, seed/cutting/root collection, grow-out, and plant installation shall be conducted by a landscape company approved by the City of Monterey with experience working on restoration projects and within the habitats present on-site. Following the relocation, the plantings/seedlings shall be monitored annually for five years or longer by a botanist paid for and hired by the Project proponent to determine the success of the relocation. For individual plants, success criteria is the establishment of new viable occurrences equal to or greater in number than the number of plants impacted, for at least three years without supplemental care such as watering. On-site maintenance of the relocated plants shall be contracted to a landscaping company which will also be paid for and hired by the Project proponent. An annual report by a botanist detailing the success of the relocation shall be drafted and submitted to all responsible agencies (e.g., CDFW, USFWS) for their review. If success criteria are not met, management of the relocated plants will be modified as needed, but management and reporting shall continue until success criteria are met”. CDFW would like to note that, for State listed or Native Plant Protection Act (NPPA) listed species, any take, including relocation, would require an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) and/or California Code of Regulations, Title 14, Section 786.9, subdivision (b). If special-status plant species, including State listed or NPPA listed plants species, are documented during surveys for a project tiered from this Plan, consultation with CDFW is recommended. For State listed and NPPA listed species, if take cannot be avoided, take authorization would be warranted prior to any relocation efforts or initiation of ground-disturbing activities for any projects tiered from this Plan. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081 subdivision (b) and/or California Code of Regulations, Title 14, Section 786.9, subdivision (b).

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

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natural communities detected during surveys to the (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 Plan, 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 Plan 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.)

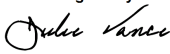
CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR 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>).

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:


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Julie A. Vance

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REFERENCES

California Department of Fish and Wildlife. 2024. Biogeographic information and observation system (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed 03 April, 2024.