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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

**Mar 14 2024**

**STATE CLEARINGHOUSE**

March 14, 2024

Heather Adamson  
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**Subject: 2050 Metropolitan Transportation Plan/Sustainable Communities Strategy and 2050 Regional Transportation Plans for San Benito, Santa Cruz, and Monterey Counties (Project).  
Notice of Preparation (NOP)  
SCH No.: 2024010524**

Dear Heather Adamson:

The California Department of Fish and Wildlife (CDFW) received a NOP from the Association of Monterey Bay Area Governments (AMBAG) for the above-referenced 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 Fish and Game Code. While the comment period may have ended, CDFW respectfully requests that the Association of Monterey Bay Area Governments still consider our comments.

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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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## **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 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, 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).

**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).

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Additionally, specified types of infrastructure projects may be eligible for an incidental take permit 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 incidental take permit may be pursued for the Project.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Association of Monterey Bay Area Governments (AMBAG)

**Objective:** As the metropolitan planning organization for the tri-county region of Monterey, San Benito, and Santa Cruz counties, AMBAG is charged with developing a 2050 Metropolitan Transportation Plan/Sustainable Communities Strategy (MTP/SCS). The 2050 MTP/SCS is both a long-range transportation plan and Sustainable Communities Strategy for Monterey, San Benito, and Santa Cruz counties. The Council of San Benito County Governments (SBCOG), the Santa Cruz County Regional Transportation Commission (SCCRTC), and the Transportation Agency for Monterey County (TAMC) are the State-designated Regional Transportation Planning Agencies (RTPAs) for San Benito, Santa Cruz, and Monterey counties, respectively. Each RTPA prepares a county-level long-range Regional Transportation Plan (RTP), which will be evaluated in the forthcoming Programmatic Environmental Impact Report (PEIR). The 2050 MTP/SCS is used to guide the development of the Regional and Federal Transportation Improvement Programs, as well as other transportation programming documents and plans. The MTP outlines the region's goals and policies for meeting current and future mobility needs, providing a foundation for transportation decisions by local, regional, and State officials that are ultimately aimed at achieving a coordinated and balanced transportation system. The 2050 MTP/SCS sets forth actions, programs, and projects to address these needs consistent with adopted policies and goals. The 2050 MTP/SCS also documents the financial resources needed to implement the plan. Additionally, pursuant to SB 375, AMBAG (as the regional MTP) must prepare an SCS that demonstrates how the region will meet its greenhouse gas reduction target (6% reduction by 2035) through integrated land use, housing, and transportation planning.

**Location:** Monterey County, Santa Cruz County, and San Benito County

## **COMMENTS AND RECOMMENDATIONS**

The NOP indicates that the Environmental Impact Report (EIR) for this Project will be a PEIR. Per project information, the draft PEIR will be characterized as one large project and acts as the first tier of environmental review.

CDFW is unable to provide substantive comments due to the limited Project information provided to us. Many special-status plant and animal species in the proposed Project

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area have been reported to the California Natural Diversity Database (CNDDDB) (CDFW 2024). The following species, organized by potential for occurrence within Monterey, Santa Cruz, and San Benito Counties, should be considered as part of the PEIR that will be drafted for this Project:

### Monterey County

The federally endangered (FE) tidewater goby (*Eucyclogobius newberryi*); federally threatened (FT) steelhead - south-central California coast DPS (*Oncorhynchus mykiss irideu*); Fully Protected (FP), State endangered (SE) and FE California condor (*Gymnogyps californianus*) and Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*); SE and FE coastal dunes milk-vetch (*Astragalus tener var. titi*), Hickman's cinquefoil (*Potentilla hickmanii*), Monterey clover (*Trifolium trichocalyx*), and California Ridgway's rail (*Rallus obsoletus obsoletus*), least bell's vireo (*Vireo bellii pusillus*), Menzies' wallflower (*Erysimum menziesii*), Tidestrom's lupine (*Lupinus tidestromii*), and foothill yellow-legged frog - south coast DPS (*Rana boylei*); SE and FT foothill yellow-legged frog-central coast DPS and beach layia (*Layia carnosa*); SE seaside bird's beak (*Cordylanthus rigidus ssp. littoralis*); SE and fully protected (FP) bald eagle (*Haliaeetus leucocephalus*); SE Santa Lucia mint (*Pogogyne clareana*); State rare (SR) adobe sanicle (*Sanicula maritima*) and Pismo clarkia (*Clarkia speciosa ssp. immaculata*); State Candidate endangered (SCE) Crotch's bumble bee (*Bombus crotchii*) and western bumble bee (*Bombus occidentalis*); State threatened (ST) and FE San Joaquin kit fox (*Vulpes macrotis mutica*) and Monterey gilia (*Gilia tenuiflora*); ST and FT California tiger salamander - central California DPS (*Ambystoma californiense*); FP and ST California black rail (*Laterallus jamaicensis coturniculus*); ST bank swallow (*Riparia riparia*), Swainson's hawk (*Buteo swainsoni*), and tricolored blackbird (*Agelaius tricolor*); federally proposed endangered (FPE) and ST longfin smelt (*Spirinchus thaleichthys*); FP and FT southern sea otter (*Enhydra lutris nereis*); FP golden eagle (*Aquila chrysaetos*), northern elephant seal (*Mirounga angustirostris*), and white-tailed kite (*Elanus leucurus*); State species of special concern (SSC) and FE arroyo toad (*Anaxyrus californicus*); FT and SSC California red-legged frog (*Rana draytonii*) and western snowy plover (*Charadrius nivosus nivosus*); federally proposed threatened (FPT) and SSC western spadefoot (*Spea hammondi*) and western pond turtle (*Emys marmorata*); and the SSC American badger (*Taxidea taxus*), yellow-breasted chat (*Icteria virens*), burrowing owl (*Athene cunicularia*), black swift (*Cypseloides niger*), coast horned lizard (*Phrynosoma blainvillii*), coast range newt (*Taricha torosa*), Monterey dusky-footed woodrat (*Neotoma macrotis luciana*), Monterey hitch (*Lavinia exilicauda harengus*), northern California legless lizard (*Anniella pulchra*), northern harrier (*Circus hudsonius*), Pacific lamprey (*Entosphenus tridentatus*), pallid bat (*Antrozous pallidus*), purple martin (*Progne subis*), San Joaquin coachwhip (*Masticophis flagellum ruddocki*), Salinas pocket mouse (*Perognathus inornatus psammophilus*), southern coastal roach (*Hesperoleucus venustus subditus*),

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Townsend's big-eared bat (*Corynorhinus townsendii*), western mastiff bat (*Eumops perotis californicus*), yellow warbler (*Setophaga petechia*), loggerhead shrike (*Lanius ludovicianus*), grasshopper sparrow (*Ammodramus savannarum*), short-eared owl (*Asio flammeus*), olive-sided flycatcher (*Contopus cooperi*), willow flycatcher (*Empidonax traillii*), and Monterey shrew (*Sorex ornatus salarius*).

### San Benito County

The FT steelhead - south-central California coast DPS; FP, SE and FE blunt-nosed leopard lizard (*Gambelia sila*) and California condor; SE and FE giant kangaroo rat (*Dipodomys ingens*) and least bell's vireo; SE and FT western yellow-billed cuckoo (*Coccyzus americanus occidentalis*) and foothill yellow-legged frog - central coast; SE seaside bird's-beak; SCE Crotch's bumble bee and western bumble bee; ST and FE San Joaquin kit fox; ST and FT California tiger salamander - central California DPS; ST bank swallow, Nelson's (*San Joaquin*) antelope squirrel (*Ammospermophilus nelson*), Swainson's hawk, and tricolored blackbird; SSC and FT California red-legged frog; the FPT and SSC western pond turtle and western spadefoot toad; and SSC American badger, burrowing owl, California glossy snake (*Arizona elegans occidentalis*), coast horned lizard, coast range newt, long-eared owl (*Asio otus*), Monterey dusky-footed woodrat, mountain plover (*Charadrius montanus*), northern California legless lizard, northern harrier, pallid bat, Salinas pocket mouse, San Joaquin coachwhip, short-eared owl, Townsend's big-eared bat, Tulare grasshopper mouse (*Onychomys torridus tularensis*), short-nosed kangaroo rat (*Dipodomys nitratoides brevinasus*), two-striped gartersnake (*Thamnophis hammondi*), western mastiff bat, western red bat (*Lasiurus frantzii*), and yellow-breasted chat (*Icteria virens*).

### Santa Cruz County

The FE and SE coho salmon-central California coast ESU (*Oncorhynchus kisutch* pop. 4), Santa Cruz wallflower (*Erysimum teretifolium*), Scotts Valley polygonum (*Polygonum hickmanii*), and white-rayed pentachaeta (*Pentachaeta bellidiflora*); FP, SE, and FE Santa Cruz long-toed salamander and California condor; FP and SE bald eagle; FP golden eagle and white-tailed kite; ST and FP California black rail; FP and FT southern sea otter; SE Beldings savannah sparrow (*Passerculus sandwichensis belding*); SE and FT Santa Cruz cypress (*Hesperocyparis abramsiana* var. *abramsiana*), Santa Cruz tarplant (*Holocarpha macradenia*), and marbled murrelet (*Brachyramphus marmoratus*); SE San Francisco popcornflower (*Plagiobothrys diffusus*) and Humboldt County milk-vetch (*Astragalus agnicidus*); SR Dudley's lousewort (*Pedicularis dudleyi*); ST and FE Monterey gilia; ST and FT California tiger salamander; ST bank swallow and tricolored blackbird; SCE Crotch's bumble bee and western bumble bee; FT and SSC California red-legged frog and western snowy plover; FPT and SSC western pond turtle; and SSC California giant salamander (*Dicamptodon ensatus*), Santa Cruz black salamander (*Aneides niger*), Cassin's auklet (*Ptychoramphus aleuticus*), Vaux's swift (*Chaetura vauxi*), black swift, mountain plover, purple martin, yellow-breasted chat, loggerhead

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shrike, saltmarsh common yellowthroat (*Geothlypis sinuosa*), yellow warbler, grasshopper sparrow, Bryant's savannah sparrow (*Passerculus sandwichensis alaudinus*), yellow rail (*Coturnicops noveboracensis*), Northern harrier, short-eared owl, long-eared owl, burrowing owl, olive-sided flycatcher, Monterey hitch, Pacific lamprey, San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*), American badger, Monterey shrew, pallid bat, Townsends big-eared bat, western red bat, northern California legless lizard, and coast horned lizard.

### **Botanical Surveys**

As this is a metropolitan transportation plan, additional projects may be tiered from this Project. CDFW recommends that the Project PEIR include a measure requiring each project that is tiered under the parent project to assess the subsequent project site(s) for suitable habitat for special-status plants and conduct botanical surveys.

If a project contains suitable habitat for special-status species, the project area should be surveyed by a qualified botanist for any possible special-status plants following the "Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities"

(<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>) as part of the biological technical studies completed in support of the CEQA documents tiered from this Plan. CDFW recommends that the plant surveys be floristic and, if necessary, utilize a known reference site for any special status plants in order to provide a high level of confidence in the effort and results.

If a special status plant is found, CDFW recommends that the 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.

### **California Endangered Species Act**

Reasonably foreseeable future projects tiered from the Project PEIR may be subject to CDFW's regulatory authority pursuant to CESA. In the event that species listed under CESA are detected during surveys, consultation with CDFW is warranted to discuss how to implement the Project and avoid "take," or if avoidance is not feasible, to acquire a State Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b), prior to any ground disturbing activities. In addition, CDFW advises that

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mitigation measures for the CESA listed species be fully addressed in the CEQA document prepared for any future project tiered from the Project PEIR.

CDFW therefore recommends that the Project PEIR include information related to these requirements and advises that projects tiered from the Project PEIR retain a qualified biologist to determine if potential impacts to CESA listed species may require the need to obtain a 2081 ITP.

### **Nesting birds**

CDFW recommends that all projects tiered from the Project PEIR 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.

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

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support any variance from these buffers and notify CDFW in advance of implementing a variance.

### **Cumulative Impacts**

Given that this Project is serving 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 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 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.

### **Lake and Streambed Alteration**

Reasonably foreseeable future projects tiered from the Project PEIR may be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires project proponents 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; or (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 perennial in nature. For additional information on notification requirements, please contact our staff in the LSA Program at (559) 243-4593, or [R4LSA@wildlife.ca.gov](mailto:R4LSA@wildlife.ca.gov).

CDFW therefore recommends that the Project PEIR include information related to these requirements of Fish and Game code and advise that projects tiered from the Project retain a qualified biologist to determine if potential impacts to streams may require the need to obtain a 1600 LSAA.

### **Federally Listed Species**

CDFW recommends consulting with the USFWS on potential impacts to federally listed species. 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



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essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS to comply with FESA is advised well in advance of any ground disturbing activities.

## 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 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](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>.

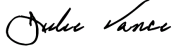
## FILING FEES

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).

## Conclusion

CDFW is available to meet with you ahead of the Project PEIR preparation to discuss potential impacts and possible mitigation measures, including site specific impacts and mitigation measures, for some or all of the resources that may be analyzed in the PEIR. If you have questions regarding this letter, please contact Kelley Nelson, Environmental Scientist, at (559) 580-3194 or by email at [kelley.nelson@wildlife.ca.gov](mailto:kelley.nelson@wildlife.ca.gov).

Sincerely,

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## **LITERATURE CITED**

California Department of Fish and Wildlife. 2024. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed February 22, 2024.