



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



November 1, 2024

Kim Fowler, Planning Manager
City of Morro Bay
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Morro Bay, California 93442
805-772-6577
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**Subject: 3300 Panorama Drive Project (Project)
Notice of Preparation (NOP)
State Clearinghouse No.: 2024100022**

Dear Kim Fowler:

The California Department of Fish and Wildlife (CDFW) received a NOP from the City of Morro Bay, as Lead Agency, for the above-referenced Project pursuant 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, 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 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

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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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, reasonably foreseeable future projects may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of reasonably foreseeable future projects 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.

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)
- 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).

As a responsible agency, 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.

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: Morro 94 LLC

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Objective: The Project proposes the demolition of onsite structures and the subdivision of the 10.1-acre Project site to create 46 residential lots and one common lot. Residential lots would range in size from approximately 2,800 square feet to 6,690 square feet and would be developed with a total of 46 single family residences, 16 of which would contain separate living facilities interior to the structure. Onsite vehicular access would be provided by newly created internal roadways that would provide access to residential lots throughout the site. There would be two ingress connections from the private roads on the Project site to the public street, Panorama Drive. Portions of the Project site would also be used for drainage, infrastructure, and open space.

Location: The 10.1-acre Project site is located at 3300 Panorama Drive in the northeast corner of the City of Morro Bay, in San Luis Obispo County. The Project site is approximately 2,000 feet east of the Pacific Ocean and is within the Coastal Zone as established by the California Coastal Commission. The Project is located within Assessor's Parcel Number (APN): 065-038-001.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City of Morro Bay 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 CEQA document prepared for this Project.

Aerial imagery of the Project site and its surroundings show the area contains three abandoned operations buildings, a control building, and an asphalt parking lot. The Project site, aside from the existing buildings, consists primarily of annual grassland and riparian habitat, with portions of the Project site supporting planted Monterey cypress (*Hesperocyparis macrocarpa*). An unnamed stream is present along the northwestern perimeter of the property which conveys flows from the upslope hillside into a culvert located north of the control building and paved parking lot, and ultimately into the Pacific Ocean. The Project site is bordered by residential housing to the northwest, west, and southwest and surrounded by undeveloped open space to the northeast, east, and southeast.

A review of the California Natural Diversity Database (CNDDDB) (CDFW 2024) and inaturalist (inaturalist 2024) shows the Project site is within the geographic range of several special-status species, including: the State fully protected white-tailed kite (*Elanus leucurus*); the State candidate burrowing owl (*Athene cunicularia*) and Crotch's bumble bee (*Bombus crotchii*); the State species of special concern and federally threatened California red-legged frog (*Rana draytonii*); and the State species of special concern American badger (*Taxidea taxus*), loggerhead shrike (*Lanius ludovicianus*), coast horned lizard (*Phrynosoma blainvilli*), and northern California legless lizard (*Anniella pulchra*).

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White-tailed Kite

The State fully protected white-tailed kite (WTKI) may occur in the vicinity of the Project site. There were no referenced focused surveys or avoidance measures in the Biological Resources Assessment (BRA) for WTKI. As such, to avoid potential Project-related impacts to the species, CDFW recommends that a qualified biologist conduct focused surveys for nesting WTKI within a ½ mile radius around all Project activities as part of the biological studies conducted in support of the DEIR. In addition to the habitat assessment and focused surveys for WTKI, CDFW recommends the DEIR include the following:

Recommended Mitigation Measure 1: White-tailed kite no-disturbance buffer

CDFW recommends a minimum no-disturbance buffer of ½-mile be delineated around active WTKI nests 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 parental care for survival.

Recommended Mitigation Measure 2: White-tailed kite Consultation

In the event that WTKI are detected during surveys, consultation with CDFW is warranted to discuss Project implementation and take avoidance.

Burrowing Owl

The California Fish and Game Commission (FGC) approved burrowing owl (BUOW) as a candidate for potential listing as a protected species under CESA on October 10, 2024, and published these findings in the California Regulatory Notice Register (Notice Register) on October 25, 2024. As such, BUOW is now considered a candidate under CESA and receives the same legal protection afforded to an endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085). As BUOW is now considered a candidate under CESA, CDFW recommends updating the pre-construction survey and avoidance measures for BUOW in the NOP with the following mitigation measures:

Recommended Mitigation Measure 3: BUOW Preconstruction Surveys

CDFW recommends that a qualified biologist conduct focused surveys for BUOW within 14 days prior to the start of ground disturbing activities. As part of these surveys, CDFW recommends the qualified Biologist conduct two take avoidance (pre-construction) surveys consistent with the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012). The two surveys shall be conducted at least seven days apart, with the final survey conducted within 48 hours prior to ground disturbance. If a lapse in Project-related work of 14 calendar days or longer occurs, another take avoidance survey is recommended.

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Recommended Mitigation Measure 4: BUOW take authorization

If surveys indicate the presence or potential presence of BUOW, consultation with CDFW is recommended for guidance on the development of mitigation measures such as avoidance, minimization, and mitigation. If take cannot be avoided, acquisition of an ITP pursuant to Fish and Game Code Section 2081(b) would be required to comply with CESA, prior to initiating ground-disturbing activities.

Crotch's Bumble Bee

The Project site is within the range of Crotch's bumble bee (CBB) and CDFW is aware of multiple occurrences of CBB along the Central Coast within the Project vicinity. CBB are known to inhabit areas of grasslands and scrub that contain requisite habitat elements for nesting, such as small mammal burrows and bunch/thatched grasses, and these habitat elements appear to be present within the Project site. As the NOP and BRA, which was prepared to inform the NOP, do not include a discussion for this species, CDFW recommends a qualified biologist conduct a habitat assessment as part of the biological studies conducted in support of the DEIR to determine if the Project site and the immediate surrounding vicinity contain habitat suitable to support CBB. Potential nesting sites, which include all small mammal burrows, perennial bunch grasses, thatched annual grasses, brush piles, old bird nests, dead trees, and hollow logs would need to be documented as part of the assessment. If potentially suitable habitat is identified, CDFW recommends that a qualified biologist conduct focused surveys for CBB, and their requisite habitat features following the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023). In addition to the habitat assessment and focused surveys for CBB, CDFW recommends the DEIR include the following:

Recommended Mitigation Measure 5: CBB Habitat Assessment

CDFW recommends a qualified biologist conduct a habitat assessment prior to construction to determine if the Project site and the immediate surrounding vicinity contain habitat suitable to support CBB. Potential nesting sites, which include all small mammal burrows, perennial bunch grasses, thatched annual grasses, brush piles, old bird nests, dead trees, and hollow logs would need to be documented as part of the assessment.

Recommended Mitigation Measure 6: CBB Surveys

If potentially suitable habitat is identified, CDFW recommends that a qualified biologist conduct focused surveys for CBB, and their requisite habitat features following the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023).

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Recommended Mitigation Measure 7: CBB Avoidance

If CBB is detected, then CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid take and potentially significant impacts. 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.

Recommended Mitigation Measure 8: CBB Take Authorization

If take cannot be avoided, CDFW recommends acquiring an ITP pursuant to Fish and Game Code Section 2081(b), prior to initiating ground-disturbing activities.

State Species of Special Concern

CDFW concurs with the BRA's Mitigation Measures 5 through 8 for American badger, loggerhead shrike, California red-legged frog, coast horned lizard, and northern California legless lizard and it is recommended that these measures be incorporated within the DEIR.

Editorial Comments and/or Suggestions

Nesting birds: CDFW encourages that Project ground-disturbing activities occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the nesting season (February 1st through September 15th), the Project applicant 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 Code sections as referenced above.

CDFW further recommends that a qualified biologist conduct a pre-construction survey 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 the Project site to identify nests and determine their status. A sufficient area means any area potentially affected, either directly or indirectly, by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. CDFW recommends that a qualified biologist establish a behavioral baseline of all identified nests. Once Project activities begin, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

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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 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 a compelling biological or ecological reason to do so, such as when the Project site 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.

Lake and Streambed Alteration: Based on aerial imagery and the NOP, there is an existing stream on the Project site. CDFW would like to emphasize that any Project activities that substantially change the bed, bank, and channel of any river, stream, or lake are subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity 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 (including the removal of riparian vegetation); (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 and may include those that are highly modified such as canals and retention basins.

CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement (LSAA); therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts to lakes or streams, a subsequent CEQA analysis may be necessary for LSAA issuance. For information on notification requirements, please refer to CDFW's website (<https://wildlife.ca.gov/Conservation/LSA>) or contact CDFW staff in the Central Region Lake and Streambed Alteration Program at (559) 243-4593.

CNDDDB: Please note that the CNDDDB is populated by records through voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record in the CNDDDB does not mean a species is not present. In order to adequately assess any potential Project related impacts to biological resources, surveys conducted by a qualified biologist during the appropriate survey period(s) and using the appropriate protocol survey methodology are warranted in order to determine whether or not any special-status species are present at or near the Project site.

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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 the CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to the CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

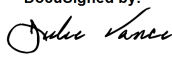
If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required 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 appreciates the opportunity to comment on the NOP to assist the City of Morro Bay 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>). If you have any questions regarding this letter or further coordination, please contact Evelyn Barajas- Perez, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 503-5738, or by electronic mail at evelyn.barajas-perez@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

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REFERENCES

California Department of Fish and Game. 2012. Staff report on burrowing owl mitigation. Sacramento, California, USA.

California Department of Fish and Wildlife. 2024. Biogeographic information and observation system (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed 15 October 2024.

California Department of Fish and Wildlife. 2023. Survey considerations for California Endangered Species Act candidate bumble bee species. California Department of Fish and Wildlife, Sacramento, California, USA.

iNaturalist. 2024. <https://www.inaturalist.org>. Accessed 17 October 2024.

Attachment 1

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

**RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)**

**PROJECT: 3300 Panorama Drive Project Morro 94, LLC (065-038-001) (Project)
Notice of Preparation (NOP)**

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
<i>White-tailed kite</i>	
Mitigation Measure 2: White-tailed kite Consultation	
Consult with CDFW if white-tailed kites have been detected on the Project site	
<i>Burrowing Owl</i>	
Mitigation Measure 3: Pre-Project Activity Surveys	
Qualified biologist conducts two take avoidance (pre-construction) surveys	
Mitigation Measure 4: BUOW take authorization	
Pursue an ITP if BUOW take cannot be avoided	
<i>Crotch's Bumble Bee</i>	
Mitigation Measure 5: CBB Habitat Assessment	
Conduct habitat assessment for CBB	
Mitigation Measure 6: CBB Surveys	
Conduct focused surveys for CBB	

<p>Mitigation Measure 8: CBB Take Authorization</p>	
<p>If take cannot be avoided, CDFW recommends acquiring an ITP pursuant to Fish and Game Code Section 2081(b), prior to initiating ground-disturbing activities.</p>	
<p><i>During Construction</i></p>	
<p>Mitigation Measure 1: White-tailed kite no-disturbance buffer</p>	
<p>If active nests are found it is recommended maintain a 0.5-mile buffer</p>	
<p>Mitigation Measure 7: CBB Avoidance</p>	
<p>CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet</p>	