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GAVIN NEWSOM, Governor
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November 27, 2024

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**Subject: County of Monterey Sixth Cycle Housing Element (2023-2031) Project
(File Number REF220020) (Plan)
Notice of Preparation (NOP)
SCH No.: 2024100963**

Dear Jaime Scott Guthrie:

The California Department of Fish and Wildlife (CDFW) received an NOP from Monterey County 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.

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, reasonably foreseeable future project's 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 reasonably foreseeable future project's 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.

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).

Unlisted Species: Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened (E, R, or T) on any State or federal list to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for E,

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R, or T, as specified in the CEQA Guidelines section 15380, CDFW recommends it be fully considered in the environmental analysis for the Plan.

PLAN DESCRIPTION SUMMARY

Proponent: Monterey County

Objective: The Plan involves amending the County of Monterey General Plan to update the Housing Element for the Sixth Cycle 2023-2031 planning period (“HEU6”), as well as amending other components of the General Plan, including the Circulation Element, Conservation and Open Space Element, Land Use Element, Public Services Element, Carmel Valley Master Plan (“CVMP”), Central Salinas Valley Area Plan (“CSVAP”), Fort Ord Master Plan (“FOMP”), Greater Monterey Peninsula Area Plan (“GMPAP”), Greater Salinas Area Plan (“GSAP”), North County Area Plan (“NCAP”), Toro Area Plan (“TAP”); and to Local Coastal Program (“LCP”) components, including the Carmel Area Land Use Plan (“CALUP”) and North County Land Use Plan (“NCLUP”), amendments to the Monterey County Zoning Code (Title 20 Coastal Zone and Title 21 Inland Areas), and other approvals as necessary to implement the HEU6 and comply with state law.

Location: The Plan area includes Monterey County (unincorporated countywide)

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist Monterey County in adequately identifying and/or mitigating the Plan’s significant, or potentially significant, direct, indirect, and cumulative impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document for this Plan.

The NOP indicates that the Draft Environmental Impact Report (DEIR) prepared for the Plan will consider and analyze potential environmental effects to determine the level of significance. The DEIR will also identify and evaluate alternatives to the proposed Plan. 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 2024) as well as CDFW familiarity with biological resources in the Plan Area, 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. CDFW

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recommends that the species identified in Attachment 1 of this letter be considered as part of the DEIR that will be drafted for this Plan.

Siting of Opportunity Sites

The Plan NOP identifies “Opportunity Sites” that will be evaluated within the Plan’s DEIR for potential development, and it appears that several of these Opportunity Sites, such as Site 47 and Site 61, are located on lands that contain natural habitats with the potential for special-status species such as Santa Cruz long toed salamander (*Ambystoma macrodactylum croceum*), California tiger salamander (*Ambystoma californiense*), and California red legged frog (*Rana draytonii*). It also appears that certain Opportunity Sites may be located on lands bordering conserved natural lands such as the Fort Ord National Monument. As such, CDFW recommends that projects tiered from this Plan within or adjacent to natural habitats and conserved lands fully consider the potential for direct and indirect special-status species impacts, and that early consultation with CDFW occur prior to project implementation.

Cumulative Impacts

Given that a 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 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 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.

California Endangered Species Act

Reasonably foreseeable future projects tiered from this Plan may be subject to CDFW’s regulatory authority pursuant to the California Endangered Species Act (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 ITP, pursuant to Fish and Game Code section 2081 subdivision (b), prior to any ground disturbing activities. In addition, CDFW advises that mitigation measures for the CESA listed species be fully addressed in the CEQA document prepared for any future project tiered from this Plan.

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

Lake and Stream Alteration

Reasonably foreseeable future projects tiered from this Plan 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 Lake and Stream Alteration Program at (559) 243-4593, or R4LSA@wildlife.ca.gov.

CDFW therefore recommends that the DEIR for this Plan include information related to these requirements of Fish and Game code and advise that projects tiered from this Plan retain a qualified biologist to determine if potential impacts to streams may require the need to notify pursuant to Fish and Game Code section 1602.

Botanical Surveys

CDFW recommends that the DEIR for this Plan include a measure requiring that projects tiered from this Plan located within natural habitats 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>). 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

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consultation with CDFW and/or the United States Fish and Wildlife Service (USFWS) be conducted to determine permitting needs.

Nesting birds

CDFW recommends that all projects tiered from this 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.

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 for 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.

CEQA Alternatives Analysis

CDFW recommends that the information and results obtained from the cumulative impacts analysis conducted as part of this Plan's DEIR be used to develop and modify

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the Plan's alternatives to avoid and minimize impacts to biological resources to the maximum extent possible. Please note that when efforts to avoid and minimize impacts have been exhausted for projects tiered from this Plan, remaining impacts to sensitive biological resources may need to be mitigated to reduce impacts to a less than significant level, if feasible.

CNDDDB

Please note that the CNDDDB is populated by 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. All projects tiered from this Plan should adequately assess any potential project-related impacts to biological resources by ensuring biological surveys are conducted by a qualified wildlife biologist during the appropriate survey period(s) and using the appropriate protocol survey methodology as warranted in order to determine whether or not any special-status species are present at or near the project area.

Federally Listed Species

CDFW recommends projects tiered from this Plan consult 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 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.

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

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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 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 Monterey County in identifying and mitigating this Plan's impact 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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For Julie A. Vance
Regional Manager

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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 15 October 2024.

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Common Name	Scientific Name	Status	
		State	Federal
Bald eagle	<i>Haliaeetus leucocephalus</i>	E; FP	-
California condor	<i>Gymnogyps californianus</i>	E; FP	E
California Ridgway's rail	<i>Rallus obsoletus obsoletus</i>	E; FP	E
Foothill yellow-legged frog - central coast DPS	<i>Rana boylei</i>	E	T
Foothill yellow-legged frog - South coast DPS	<i>Rana boylei</i>	E	E
Santa Cruz long-toed salamander	<i>Ambystoma macrodactylum croceum</i>	E; FP	E
Least bell's vireo	<i>Vireo bellii pusillus</i>	E	E
Willow flycatcher	<i>Empidonax traillii</i>	E	-
Beach layia	<i>Layia carnosa</i>	E	T
Coastal dunes milk-vetch	<i>Astragalus tener var. titi</i>	E	-
Hickman's cinquefoil	<i>Potentilla hickmanii</i>	E	E
Menzies' wallflower	<i>Erysimum menziesii</i>	E	E
Monterey clover	<i>Trifolium trichocalyx</i>	E	E
Santa Lucia mint	<i>Pogogyne clareana</i>	E	-
Seaside bird's beak	<i>Cordylanthus rigidus ssp. littoralis</i>	E	-
Tidestrom's lupine	<i>Lupinus tidestromii</i>	E	E
San Joaquin kit fox	<i>Vulpes macrotis mutica</i>	T	E
Bank swallow	<i>Riparia riparia</i>	T	-
California black rail	<i>Laterallus jamaicensis coturniculus</i>	T; FP	-
Swainson's hawk	<i>Buteo swainsoni</i>	T	-
Tricolored blackbird	<i>Agelaius tricolor</i>	T	-
California tiger salamander - central California DPS	<i>Ambystoma californiense</i>	T	T
Longfin smelt	<i>Spirinchus thaleichthys</i>	T	-
Monterey gilia	<i>Gilia tenuiflora</i>	T	E

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Northern elephant seal	<i>Mirounga angustirostris</i>	FP	-
Golden eagle	<i>Aquila chrysaetos</i>	FP	-
White-tailed kite	<i>Elanus leucurus</i>	FP	-
Mountain Lion	<i>Puma concolor</i>	C	-
Western burrowing owl	<i>Athene cunicularia hypugaeae</i>	C	-
Crotch's bumble bee	<i>Bombus crotchii</i>	C	-
Western bumble bee	<i>Bombus occidentalis</i>	C	-
Adobe sanicle	<i>Sanicula maritima</i>	R	-
Pismo clarkia	<i>Clarkia speciosa ssp. immaculata</i>	R	-
American badger	<i>Taxidea taxus</i>	SSC	-
Monterey dusky-footed woodrat	<i>Neotoma macrotis luciana</i>	SSC	-
Monterey shrew	<i>Sorex ornatus salarii</i>	SSC	-
Pallid bat	<i>Antrozous pallidus</i>	SSC	-
Salinas pocket mouse	<i>Perognathus inornatus psammophilus</i>	SSC	-
Townsend's big-eared bat	<i>Corynorhinus townsendii</i>	SSC	-
Western mastiff bat	<i>Eumops perotis californicus</i>	SSC	-
Black swift	<i>Cypseloides niger</i>	SSC	-
Grasshopper sparrow	<i>Ammodramus savannarum</i>	SSC	-
Loggerhead shrike	<i>Lanius ludovicianus</i>	SSC	-
Northern harrier	<i>Circus hudsonius</i>	SSC	-
Olive-sided flycatcher	<i>Contopus cooperi</i>	SSC	-
Purple martin	<i>Progne subis</i>	SSC	-
Short-eared owl	<i>Asio flammeus</i>	SSC	-
Yellow warbler	<i>Setophaga petechia</i>	SSC	-
Yellow-breasted chat	<i>Icteria virens</i>	SSC	-
Western snowy plover	<i>Charadrius nivosus nivosus</i>	SSC	T
Coast horned lizard	<i>Phrynosoma blainvillii</i>	SSC	-

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Northern California legless lizard	<i>Anniella pulchra</i>	SSC	-
San Joaquin coachwhip	<i>Masticophis flagellum ruddocki</i>	SSC	-
Western pond turtle	<i>Emys marmorata</i>	SSC	PT
Arroyo toad	<i>Anaxyrus californicus</i>	SSC	T
Coast range newt	<i>Taricha torosa</i>	SSC	-
California red-legged frog	<i>Rana draytonii</i>	SSC	T
Western spadefoot	<i>Spea hammondi</i>	SSC	PT
Monterey hitch	<i>Lavinia exilicauda harengus</i>	SSC	-
Pacific lamprey	<i>Entosphenus tridentatus</i>	SSC	-
Southern coastal roach	<i>Hesperoleucus venustus subditus</i>	SSC	-
Steelhead-south-central California coast DPS	<i>Onchorhynchus mykiss irideus pop. 9</i>	SSC	T

E= Endangered; T=Threatened, C= Candidate for listing as Threatened or Endangered, R= Rare, SSC= Species of Special Concern, FP= Fully Protected, PT=Proposed Threatened