



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

Jan 08 2021

January 7, 2021

STATE CLEARINGHOUSE

Scot Graham
City of Morro Bay
955 Shasta Ave
Morro Bay, California 93442

Subject: City of Morro Bay Plan (Project)
Draft Environmental Impact Report (DEIR)
SCH No.: 2017111026

Dear Mr. Graham:

The California Department of Fish and Wildlife (CDFW) received a DEIR from the City of Morro Bay for the above-referenced Project pursuant to 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 Fish and Game Code.

While the comment period may have ended, CDFW would appreciate if you will still consider our comments and recommendations.

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

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.

Scot Graham
City of Morro Bay
January 7, 2021
Page 2

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 may be required.

Fully Protected Species: CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. CDFW prohibits and cannot authorize take of any fully protected species.

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 Morro Bay

Objective: The General Plan and LCP Update is a comprehensive update of the City's 1988 General Plan and 1984 LCP. The land use classifications included in the General Plan and LCP, also known as Plan Morro Bay, define the basic categories of land use allowed in the city and are the basis for the zoning districts established in the City Municipal Code, which contain more specific regulations and standards governing development on individual properties. To maintain consistency with the General Plan and LCP Update, the project also includes a comprehensive Zoning Code Update which includes the Coastal Implementation Plan.

Location: The Project site is the entire city of Morro Bay and its sphere of influence.

Scot Graham
City of Morro Bay
January 7, 2021
Page 3

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.

There are several special-status species that have been documented in the Project vicinity and may be present at individual Project sites in the Project area. These resources may need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities or land use changes. The DEIR indicates there are potentially significant impacts unless mitigation measures are taken but some measures are either non-specific and potentially difficult to enforce or missing for some species.

CDFW is concerned regarding potential impacts to special-status species including, but not limited to, the State and Federally endangered Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*); the Federally threatened California red-legged frog (*Rana draytonii*); the federally and State endangered and State fully protected California least tern (*Sterna antillarum browni*); the State and federally endangered least Bell's vireo (*Vireo bellii pusillus*); the State threatened tricolored blackbird (*Agelaius tricolor*); the Federally threatened western snowy plover (*Charadrius nivosus*); the State species of special concern western pond turtle (*Emys marmorata*), American badger (*Taxidea taxus*), Blainville's coast horned lizard (*Phrynosoma blainvillii*), northern legless lizard (*Anniella pulchra*), special-status pallid and western mastiff bats (*Antrozous pallidus*) & (*Eumops perotis*); and the State and Federally endangered saltmarsh birds beak (*Cordylanthus maritimus*), marsh sandwort (*Arenaria paludicola*), Indian knob mountainbalm (*Eriodictyon altissimum*), and Chorro Creek bog thistle (*Cirsium fontinale* var. *obispoense*), the Federally threatened Morro manzanita (*Arctostaphylos morroensis*) and California seablight (*Suaeda californica*), the State threatened beach spectaclepod (*Dithyrea maritima*) and other special status plants. In order to adequately assess any potential impact to biological resources, focused biological surveys should be conducted by a qualified wildlife biologist/botanist during the appropriate survey period(s) in order to determine whether any special-status species may be present within the Project area. Properly conducted biological surveys, and the information assembled from them, are essential to identify any mitigation, minimization, and avoidance measures and/or the need for additional or protocol-level surveys, especially in the areas not in irrigated agriculture, and to identify any Project-related impacts under CESA and other species of concern.

I. Environmental Setting and Related Impact

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or

Scot Graham
City of Morro Bay
January 7, 2021
Page 4

special-status species in local or regional plans, policies, or regulations, or by CDFW or the United States Fish and Wildlife Service (USFWS)?

COMMENT 1: Morro Bay Kangaroo Rat (MBKR)

Issue: MBKR occurs on old, stabilized sand dunes in the vicinity of Los Osos in San Luis Obispo County. The range of the species is restricted to an area of approximately 12.4 square kilometers – corresponding to the distribution of Baywood fine sand (a soil type) (USFWS 2011). The Project site is within this range and consists of potentially suitable habitat for MBKR. MBKR have been documented to occur in the Project vicinity (CDFW 2020).

Specific impact: Without appropriate avoidance and minimization measures for MBKR, potential significant impacts associated with the Project's construction include burrow collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of young, and direct mortality of individuals.

Evidence impact is potentially significant: There are two primary causes for MBKR decline; (1) habitat loss resulting from development in the vicinity of Los Osos, including homes, shopping centers, and parking lots, and (2) absence of fire that has promoted the succession of dense mature plant communities, thus causing a lack in open spaces required for movement and their food plants (USFWS 2011). As a result, if the Project area is occupied by MBKR, Project activities have the potential to significantly impact this species.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential Project-related impacts to MBKR, CDFW recommends conducting the following evaluation of the Project site, incorporating the following mitigation measures into the EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 1: MBKR Habitat Assessment and Trapping Surveys

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of Project implementation, to determine if an individual Project site contains suitable habitat for MBKR. To determine if MBKR occupies the potentially suitable habitat contained within the Project site, CDFW recommends that focused protocol-level trapping surveys be conducted by a qualified wildlife biologist with appropriate permits from both CDFW and USFWS. CDFW advises that these surveys be conducted in accordance with USFWS's (1996) "*Survey Protocol for the Morro Bay Kangaroo Rat.*" CDFW recommends these surveys be conducted well in

Scot Graham
City of Morro Bay
January 7, 2021
Page 5

advance of ground-disturbing activities in order to determine if impacts to MBKR could occur.

Recommended Mitigation Measure 2: MBKR Avoidance

If suitable habitat is present and trapping is not feasible, CDFW advises full avoidance of MBKR through maintenance of a 50-foot minimum no-disturbance buffer around all small mammal burrows.

Recommended Mitigation Measure 3: MBKR Take Authorization

If MBKR is detected within an individual Project site during small mammal trapping, consultation with CDFW is warranted to determine if Project activities can avoid take. If full avoidance of habitat features is not feasible and take could potentially occur as a result of Project implementation, acquisition of a State Incidental Take Permit (ITP) pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA prior to initiating ground-disturbing activities. Alternatively, the Project proponent has the option of assuming presence of MBKR and securing a State ITP.

COMMENT 2: California Red-Legged Frog (CRLF)

Issue: CRLF primarily inhabit ponds but can also be found in other waterways including marshes, streams, and lagoons, and the species will also breed in ephemeral waters (Thomson et al. 2016). CRLF have been documented to occur in the Project vicinity (CDFW 2020). The Project area contains riparian corridors and wetted areas that may provide suitable breeding and foraging habitat features as well adjacent upland habitat features that may provide dispersal corridors and refugia. Avoidance and minimization measures are necessary to reduce impacts to CRLF to a level that is less than significant.

Specific impact: Without appropriate avoidance and minimization measures for CRLF, potentially significant impacts associated with the Project's activities include burrow collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of eggs, larvae and/or young, and direct mortality of individuals.

Evidence impact would be significant: CRLF populations throughout the State have experienced ongoing and drastic declines and many have been extirpated. Habitat loss from growth of cities and suburbs, invasion of nonnative plants, impoundments, water diversions, stream maintenance for flood control, degraded water quality, and introduced predators, such as bullfrogs are the primary threats to CRLF (Thomson et al. 2016, USFWS 2017b). Project activities have the potential to significantly impact the species.

Scot Graham
City of Morro Bay
January 7, 2021
Page 6

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to CRLF, CDFW recommends conducting the following evaluation of the Project site, incorporating the following mitigation measures into the EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 4: CRLF Surveys

CDFW recommends that a qualified wildlife biologist conduct surveys for CRLF in accordance with the USFWS “Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog” (USFWS 2005) to determine if suitable habitat features are present within an individual Project site, and if present, subsequently determine if CRLF occur within or adjacent to that Project site.

Recommended Mitigation Measure 5: CRLF Avoidance

If any CRLF are found during pre-construction surveys or at any time during construction, CDFW recommends that initial ground-disturbing activities be timed to avoid the period when CRLF are most likely to be moving through upland areas (November 1 and March 31). When ground-disturbing activities must take place between November 1 and March 31, CDFW recommends a qualified biologist with appropriate take authorization monitor construction activity daily for CRLF and halt any activities that may result in take of CRLF or relocate individuals out of harm’s way.

COMMENT 3: Least Bell’s Vireo (LBV)

Issue: LBV have been documented to occur within the Project area (CDFW 2020). Review of aerial imagery indicates the presence of riparian woodland vegetation, suitable to support LBV within the Project vicinity. Therefore, the Project has the potential to impact LBV.

Specific impact: Without appropriate avoidance and minimization measures for LBV, potential significant impacts associated with Project development include nest abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

Evidence impact is potentially significant: LBV were abundant and widespread in the United States until the 1950s (Grinnell and Miller 1944). By the 1960s, they were considered scarce (Monson 1960), and by 1980, there were fewer than 50 pairs remaining (Edwards 1980), although this number had increased to 2,500 by 2004 (Kus and Whitfield 2005). The primary cause of decline for this species has been the loss and alteration of riparian woodland habitats (USFWS 2006).

Scot Graham
City of Morro Bay
January 7, 2021
Page 7

Fragmentation of their preferred habitat has also increased their exposure to brown-headed cowbird (*Molothrus ater*) parasitism (Kus 2002). Current threats to their preferred habitat include colonization by non-native plants and altered hydrology (diversion, channelization, etc.) (USFWS 2006).

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Environmental Setting and Related Impact)

To evaluate potential impacts to LBV, CDFW recommends conducting the following evaluation of the Project site, incorporating the following mitigation measures into the EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 6: LBV Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of Project implementation, to determine if an individual Project site or its immediate vicinity contains suitable habitat for LBV. Although LBV inhabit riparian woodlands, the species has also been found to benefit from non-riparian systems including brushy fields, second-growth forest or woodland, scrub oak, coastal chaparral, and mesquite brushlands (Kus and Miner 1989 in Poulin et al. 2011).

Recommended Mitigation Measure 7: LBV Avoidance

CDFW recommends that nesting birds be avoided if possible thus, Project activities should be timed to avoid the typical bird breeding season (February 1 through September 15).

Recommended Mitigation Measure 8: LBV Surveys

If Project activities must take place during the typical bird breeding season, and suitable LBV habitat is detected during habitat assessments at or adjacent to Project sites, CDFW recommends assessing presence/absence of LBV by conducting surveys following the USFWS' "Least Bell's Vireo Survey Guidelines" (2001) well in advance of the start of Project implementation to evaluate presence/absence of LBV nesting in proximity to Project activities, and to evaluate potential Project-related impacts and permitting needs. Additionally, CDFW advises conducting focused pre-construction surveys for LBV in all areas of potentially suitable habitat within 10 days of Project implementation, when initiated during the bird breeding season to ensure LBV have not begun nesting activities between the completion of surveys and the start of Project activities.

Scot Graham
City of Morro Bay
January 7, 2021
Page 8

Recommended Mitigation Measure 9: LBV Take Authorization

LBV detection warrants consultation with CDFW to discuss how to avoid take, or if avoidance is not feasible, to acquire an ITP prior to ground-disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

COMMENT 4: Tricolored Blackbird (TRBL)

Issue: TRBL occur within or near the Project area (CDFW 2020). Review of aerial imagery indicates that the Project area has or is near to dense low vegetation fields that may serve as nest colony sites.

Specific impact: Without appropriate avoidance and minimization measures for TRBL, potential significant impacts include nest and/or colony abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

Evidence impact would be significant: As mentioned above, aerial imagery indicates that the Project encompasses low vegetation fields that may serve as nest colony sites. TRBL aggregate and nest colonially, forming colonies of up to 100,000 nests (Meese et al. 2014). Increasingly, TRBL are forming larger colonies that contain progressively larger proportions of the species' total population (Kelsey 2008). In 2008, for example, 55% of the species' global population nested in only two colonies, which were in silage fields (Kelsey 2008). In 2017, approximately 30,000 TRBL were distributed among only 16 colonies in Merced County (Meese 2017). Nesting can occur synchronously, with all eggs laid within one week (Orians 1961). For these reasons, depending on timing, disturbance to nesting colonies can cause abandonment, significantly impacting TRBL populations (Meese et al. 2014).

Recommended Potentially Feasible Mitigation Measure(s)

CDFW recommends conducting the following evaluation of the Project site, editing the EIR to include the following measures specific to TRBL, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 10: TRBL Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment of the Project site in advance of Project implementation, to determine if an individual Project site or its vicinity contains suitable habitat for TRBL.

Recommended Mitigation Measure 11: TRBL Surveys

If an individual Project site contains suitable habitat for TRBL, CDFW recommends that Project activities be timed to avoid the typical bird breeding season (February 1

Scot Graham
City of Morro Bay
January 7, 2021
Page 9

through September 15). However, if Project activities must take place during that time, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting TRBL no more than 10 days prior to the start of implementation to evaluate presence/absence of TRBL nesting colonies in proximity to Project activities and to evaluate potential Project-related impacts.

Recommended Mitigation Measure 12: TRBL Avoidance

If an active TRBL nesting colony is found during pre-activity surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer in accordance with CDFW's "Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015" (CDFW 2015b). CDFW advises that this buffer remain in place until the breeding season has ended or until a qualified biologist has determined that nesting has ceased, the birds have fledged, and are no longer reliant upon the colony or parental care for survival. It is important to note that TRBL colonies can expand over time and for this reason, the colony may need to be reassessed to determine the extent of the breeding colony within 10 days prior to Project initiation.

Recommended Mitigation Measure 13: TRBL Take Authorization

In the event that a TRBL nesting colony is 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 an ITP, pursuant to Fish and Game Code section 2081 subdivision (b), prior to any ground-disturbing activities.

COMMENT 5: California Least Tern

Issue: California least tern have been documented to occur in the Project vicinity (CDFW 2020). Ground- and vegetation-disturbing activities have the potential to result in take of the species. California least tern is a fully protected species and unauthorized take of California least tern is a violation of Fish and Game Code.

Specific impact: Without appropriate avoidance and minimization measures for California least tern, potential significant impacts associated with Project development include nest abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

Evidence impact would be significant: As a result, ground-disturbance resulting from development of individual Project sites has the potential to impact habitat that supports California least tern, which may result in significant impacts to local populations of the species.

Scot Graham
City of Morro Bay
January 7, 2021
Page 10

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential Project-related impacts to special-status species, CDFW recommends conducting the following assessment of the Project area, including the following mitigation measures, and requiring them as conditions of approval in the Project's EIR.

Recommended Mitigation Measure 14: Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment for individual Project sites, well in advance of Project implementation, to determine if the Project area or its immediate vicinity contain habitat suitable to support California least tern.

Recommended Mitigation Measure 15: Species-Specific Surveys

If suitable habitat is present, CDFW recommends that a qualified biologist conduct surveys for California least tern and their nest locations during the appropriate time of year.

Recommended Mitigation Measure 16: Take Avoidance

Detection of California least tern within or in the vicinity of individual project areas, warrants consultation with CDFW to discuss how to implement ground-disturbing activities and avoid take. CDFW prohibits and cannot authorize take, incidental or otherwise, of any fully protected species, including California least tern. Therefore, detection of fully protected species requires full avoidance.

COMMENT 6: Special-Status Bat Species

Issue: Pallid bat and western mastiff bat have been documented to occur in the Project vicinity (CDFW 2020). In addition, habitat features that have the potential to support species may be present within the Project area. However, the DEIR does not include specific measures to mitigate impacts to special-status bat species.

Specific impact: Without appropriate avoidance and minimization measures for special-status bat species, potential significant impacts resulting from ground- and vegetation-disturbing activities associated with Project construction include habitat loss, inadvertent entrapment, roost abandonment, reduced reproductive success, reduction in health and vigor of young, and direct mortality of individuals.

Evidence impact is potentially significant: Pallid bat and other bats are known to roost under bridges (Lewis 1994 and Gruver 2006). Project activities on or around bridges have the potential to affect habitat upon which special-status bat species

Scot Graham
City of Morro Bay
January 7, 2021
Page 11

depend on for successful breeding, and the potential to impact individuals and local populations.

Recommended Potentially Feasible Mitigation Measure(s)

CDFW recommends editing the EIR to include the following measures and that these be made conditions of approval for the Project.

Recommended Mitigation Measure 17: Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment well in advance of Project implementation to determine if an individual Project site or its immediate vicinity contains suitable habitat for special-status bat species.

Recommended Mitigation Measure 18: Focused Surveys

If suitable habitat is present, CDFW recommends assessing presence/absence of special-status bats by conducting protocol-level surveys during the appropriate seasonal period of bat activity.

Recommended Mitigation Measure 19: Consultation

Detection of special-status bat species warrants consultation with CDFW prior to any activity that may disturb bats. CDFW recommends submitting a Bat Eviction Plan to CDFW for written approval prior to project implementation, and that the Eviction Plan include details for excluding bats from the roost site, and a monitoring plan to ensure that all bats have exited the roost prior to the start of activity and will be unable to re-enter the roost until activity is completed. CDFW also recommends that Project or bat eviction activities be timed to avoid lactation and young-rearing.

COMMENT 7: Western pond turtle (WPT)

Issue: WPT are known to occur in the Project area (CDFW 2020). WPT are known to nest in the spring or early summer within 100 meters of a water body, although nest sites as far away as 500 meter have also been reported (Thomson et al. 2016).

Specific impact: Without appropriate avoidance and minimization measures for WPT, potentially significant impacts associated with Project activities could include nest reduction, inadvertent entrapment, reduced reproductive success, reduction in health or vigor of eggs and/or young, and direct mortality.

Evidence impact is potentially significant: The Project area has potential WPT habitat. Noise, vegetation removal, movement of workers, and ground disturbance

Scot Graham
City of Morro Bay
January 7, 2021
Page 12

as a result of Project activities have the potential to significantly impact WPT populations.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to WPT, CDFW recommends conducting the following evaluation of the Project site, editing the EIR to include the following measures specific to WPT, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 20: WPT Surveys

CDFW recommends a qualified biologist determine if suitable habitat for WPT occurs at an individual Project site. If suitable habitat is determined to occur on at an individual Project site, CDFW recommends that a qualified biologist conduct focused surveys for WPT ten days prior to Project implementation. In addition, CDFW recommends that focused surveys for nests occur during the egg-laying season (March through August) and that any nests discovered remain undisturbed until the eggs have hatched.

Recommended Mitigation Measure 21: WPT Relocation

CDFW recommends that if any WPT are discovered at an individual Project site immediately prior to or during Project activities, they be allowed to move out of the area on their own. Alternatively, WPT may be relocated out of harm's way into a nearby area with suitable habitat by a qualified biologist with the appropriate handling permit.

COMMENT 8: American Badger

Issue: American badger are known to occur in the Project area (CDFW 2020). Badgers occupy sparsely vegetated land cover with dry, friable soils to excavate dens, which they use for cover, and that support fossorial rodent prey populations (i.e. ground squirrels, pocket gophers, etc.) (Zeiner et. al 1990). The Project area supports these requisite habitat features. Therefore, the Project has the potential to impact American badger.

Specific impact: Without appropriate avoidance and minimization measures for American badger, potentially significant impacts associated with ground disturbance include direct mortality or natal den abandonment, which may result in reduced health or vigor of young.

Evidence impact is potentially significant: Habitat loss is a primary threat to American badger (Gittleman et al. 2001). The Project has the expectation to

Scot Graham
City of Morro Bay
January 7, 2021
Page 13

promote the growth of the City of Morro Bay, resulting in a high degree of land conversion and potential habitat fragmentation. As a result, ground-disturbing activities have the potential to significantly impact local populations of American badger.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to American badger associated with the Project, CDFW recommends conducting the following evaluation of individual Project sites, incorporating the following mitigation measures into the EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 22: American Badger Surveys

If suitable habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for American badger and their requisite habitat features (dens) to evaluate potential impacts resulting from ground- and vegetation-disturbance.

Recommended Mitigation Measure 23: American Badger Avoidance

If suitable habitat is present, avoidance whenever possible is encouraged via delineation and observation of a 50-foot no-disturbance buffer around dens until it is determined through non-invasive means that individuals occupying the den have dispersed.

COMMENT 9: Legless Lizard (LL)

Issue: LL have been documented in the Project vicinity (CDFW 2020). Northern California legless lizard are found primarily in areas with sandy or loose organic soils or where there is plenty of leaf litter (Zeiner et al., 1990d).

Specific impact: Without appropriate avoidance and minimization measures for LL potentially significant impacts associated with the Project's activities could include site abandonment which may result in reduced health or vigor of eggs and/or young, and/or direct mortality.

Evidence impact is potentially significant: Habitat loss is a primary threat to LL (Zeiner et al., 1990d). The Project area has the capacity to support the species and thus, the Project has potential to impact the species.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to LL, CDFW recommends conducting the following evaluation of the Project site, incorporating the following mitigation measures into the EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

Scot Graham
City of Morro Bay
January 7, 2021
Page 14

Recommended Mitigation Measure 24: LL Surveys

If suitable habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for LL and their requisite habitat features to evaluate potential impacts resulting from ground-disturbance.

Recommended Mitigation Measure 25: LL Avoidance

Avoidance whenever possible is encouraged via delineation however, a qualified biologist with the appropriate handling permit may relocate LL out of the project area into a nearby area with suitable habitat.

COMMENT 10: Coast Horned Lizard

Issue: Coast horned lizard has been documented to occur within and/or near the Project area (CDFW 2020). CDFW recommends that the EIR includes an impact analysis for coast horned lizard.

Specific impact: Without appropriate avoidance and minimization measures for the species mentioned above, potential significant impacts associated with the Project's construction include burrow or den collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individual coast horned lizard.

Evidence impact would be significant: As a result, ground disturbance resulting from development of the Project has the potential to impact habitat that supports special-status species, which may result in significant impacts to local populations of coast horned lizard.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts of the Project to special-status species, CDFW recommends conducting the following assessment of the Project area, including the following mitigation measures, and requiring them as conditions of approval in the Project's EIR.

Recommended Mitigation Measure 26: Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment, well in advance of Project implementation, to determine if individual Project sites or their immediate vicinity contain habitat suitable for coast horned lizard.

Recommended Mitigation Measure 27: Coast Horned Lizard Surveys

If suitable habitat is present, CDFW recommends assessing presence/absence of

Scot Graham
City of Morro Bay
January 7, 2021
Page 15

coast horned lizards by conducting surveys following recommended protocols or protocol-equivalent surveys. Recommended protocols vary by species. 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>).

Recommended Mitigation Measure 28: Take Avoidance

CDFW recommends that if any coast horned lizards are discovered at an individual Project site immediately prior to or during Project activities, they be allowed to move out of the area on their own. Alternatively, coast horned lizards may be relocated out of harm's way into a nearby area with suitable habitat by a qualified biologist with the appropriate handling permit.

COMMENT 11: Special-Status Plant species

Issue: Plants listed pursuant to federal Endangered Species Act, CESA, and the Native Plant Protection Act, as well as other special status plants such California Rare Plant Rank (CRPR) plant species have been documented in and around the Project area (CDFW 2020).

Specific impact: Without appropriate avoidance and minimization measures potential impacts to special-status plant species include inability to reproduce and direct mortality. Unauthorized take of species listed as threatened, endangered, or rare pursuant to CESA or the Native Plant Protection Act is a violation of Fish and Game Code.

Evidence impact would be significant: Special-status plant species plant species are threatened with habitat loss and habitat fragmentation resulting from development, vehicle and foot traffic, and introduction of non-native plant species (CNPS 2020), all of which may be unintended impacts of the Project. Therefore, impacts of the Project have the potential to significantly impact populations of the species mentioned above.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to special-status plants associated with the Project, CDFW recommends conducting the following evaluation of the Project area and including the following mitigation measures as conditions of Project approval in the Project's EIR.

Scot Graham
City of Morro Bay
January 7, 2021
Page 16

Recommended Mitigation Measure 29: Special-Status Plant Habitat Assessment

CDFW recommends that a qualified botanist conduct a habitat assessment of individual Project sites well in advance of Project implementation, to determine if the Project area or its vicinity contains suitable habitat for special-status plant species.

Recommended Mitigation Measure 30: Focused Surveys

If suitable habitat is present, CDFW recommends that individual Project sites 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 Sensitive Natural Communities” (CDFW 2018). This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. In the absence of protocol-level surveys being performed, additional surveys may be necessary.

Recommended Mitigation Measure 31: Special-Status Plant Avoidance

CDFW recommends special-status plant species be avoided whenever possible by delineation 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.

Recommended Mitigation Measure 32: Special-Status Plant Take Authorization

If a State-listed plant species is identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take. However, if take cannot be avoided, take authorization would need to occur through issuance of an ITP by CDFW to comply with CESA and/or Fish and Game Code section 1900 and California Code of Regulations, title 14, section 786.9, subdivision (b).

II. Editorial Comments and/or Suggestions

Federally Listed Species: CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, MBKR, CRLF, LBV, California least tern, saltmarsh birds beak, marsh sandwort, Indian knob mountainbalm, Chorro Creek bog thistle, Morro manzanita, California seablight, the federally threatened vernal pool fairy shrimp (*Branchinecta lynchi*), the federally

Scot Graham
City of Morro Bay
January 7, 2021
Page 17

endangered tidewater goby (*Eucyclogobius newberryi*), the federally endangered Morro shoulderband snail (*Helminthoglypta walkeriana*), and the federally threatened western snowy plover (*Charadrius nivosus*). Take under 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.

Lake and Streambed Alteration: The Project contains features that may result in Project activities at individual Project sites being 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; 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, such as the unnamed stream within the Project site, as well as those that are perennial in nature.

For additional information on notification requirements, please contact our staff in the Lake and Streambed Alteration Program at (559) 243-4593. It is important to note, CDFW is required to comply with CEQA, as a Responsible Agency, when issuing a Lake or Streambed Alteration Agreement (LSAA). If inadequate, or no environmental review, has occurred, for the Project activities that are subject to notification under Fish and Game Code section 1602, CDFW will not be able to issue the Final LSAA until CEQA analysis for the project is complete. This may lead to considerable Project delays.

Nesting birds: CDFW encourages Project implementation at individual Project sites occur during the bird non-nesting season if suitable nesting bird habitat is present. However, if ground-disturbing activities must occur during the breeding season (February through mid-September), the Project's 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 Codes as referenced above.

To evaluate Project-related impacts on nesting birds if suitable habitat is present, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground 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 work site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e. nest destruction), noise, vibration, and

Scot Graham
City of Morro Bay
January 7, 2021
Page 18

movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends the work causing that change cease and CDFW consulted for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife 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 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 area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

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 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

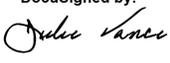
If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required 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).

Scot Graham
City of Morro Bay
January 7, 2021
Page 19

CDFW appreciates the opportunity to comment on the Project to assist the City of Morro Bay in identifying and mitigating the Project'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>). If you have any questions, please contact Jaime Marquez, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014, extension 291, or by electronic mail at Jaime.Marquez@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

cc: United States Fish and Wildlife Service
2800 Cottage Way, Suite W-2605
Sacramento, California 95825

Scot Graham
City of Morro Bay
January 7, 2021
Page 20

LITERATURE CITED

- CDFW, 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. California Department of Fish and Wildlife. March 20, 2018.
- CDFW. 2020. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed December 4, 2020.
- California Native Plant Society, Rare Plant Program. 2020. Inventory of Rare and Endangered Plants of California (online edition, v8-03 0.39). Website <http://www.rareplants.cnps.org>. Accessed 08 April 2020.
- Edwards, C. L. 1980. A report on the distribution, population trends and habitat trends and habitat requirements of the Bell's vireo on the Lower Colorado River. Yuma District Office of the Bureau of Land Management, Arizona Fish and Game Department, Yuma, AZ, USA.
- Gittleman, J. L., S. M. Funk, D. MacDonald, and R. K. Wayne, 2001. Carnivore conservation. Cambridge University Press, Cambridge, United Kingdom.
- Grinnell, J., and A. H. Miller. 1944. The Distribution of Birds of California. Pacific Coast Avifauna 27. Cooper Ornithological Club, Berkeley, CA, USA.
- Gruver, J.C. and D.A. Keinath, 2006. Townsend's Big-eared Bat (*Corynorhinus townsendii*): A Technical Conservation Assessment. [Online]. USDA Forest Service, Rocky Mountain Region. Available: <http://www.fs.fed.us/r2/projects/scp/assessments/townsendsbigearedbat.pdf>
- Kelsey, R. 2008. Results of the tricolored blackbird 2008 census. Report submitted to U.S. Fish and Wildlife Service, Portland, OR, USA.
- Kus, B. E. 2002. Fitness consequences of nest desertion in an endangered host, the least Bell's vireo. *Condor* 104: 795-802.
- Kus, B. E. and K. L. Miner. 1989. Use of non-riparian habitats by least Bell's vireos (*Vireo bellii pusillus*). In Proceedings of the California riparian systems conference: Protection, management, and restoration for the 1990's, edited by D. L. Abell, 299-303. Berkeley, CA: U.S. Forest Service General Technical Report PSW-110.
- Kus, B. E., and M. J. Whitfield. 2005. Parasitism, productivity, and population growth: Response of least Bell's vireos (*Vireo bellii extimus*) and Southwestern Willow

Scot Graham
City of Morro Bay
January 7, 2021
Page 21

- Flycatchers (*Empidonax traillii extimus*) to cowbird (*Molothrus* spp.) control. Ornithological Monographs 57:16–27.
- Lewis, S. E., 1994. Night roosting ecology of pallid bats (*Antrozous pallidus*) in Oregon. The American Midland Naturalist, Vol. 132, pp. 219-226.
- Meese, R. J., E.C. Beedy, and W.J. Hamilton, III. 2014. Tricolored blackbird (*Agelaius tricolor*), The Birds of North America (P. G. Rodewald, Ed.). Ithaca: Cornell Lab of Ornithology; Retrieved from the Birds of North America: <https://birdsna-org.bnaproxy.birds.cornell.edu/Species-Account/bna/species/tribla>. Accessed December 15, 2017.
- Monson, G. 1960. The nesting season. Southwest Regional Report, Audubon Field Notes 14:469.
- Orians, G.H. 1961. The ecology of blackbird (*Agelaius*) social systems. Ecol. Monogr. 31:285-312.
- Searcy, C.A., E. Gabbai-Saldate, and H.B. Shaffer. 2013. Microhabitat use and migration distance of an endangered grassland amphibian. Biological Conservation 158: 80-87.
- Thomson, R. C., A. N. Wright, and H. Bradley Shaffer, 2016. California Amphibian and Reptile Species of Special Concern. California Department of Fish and Wildlife and University of California Press.
- United States Fish and Wildlife Service (USFWS). 2001. Least Bell's Vireo Survey Guidelines. January 2001. 3 pp.
- United States Fish and Wildlife Service (USFWS). 1996. Survey Protocol for the Morro Bay Kangaroo Rat. 3 April, 1996.
- USFWS. 2011. Morro Bay Kangaroo Rat (*Dipodomys heermanni morroensis*), 5-Year Review: summary and evaluation. May 2011.
- USFWS, 2006. Least Bell's Vireo 5-Year Review Summary and Evaluation. September 2006. 10 pp.
- Weintraub, K., T.L. George, and S.J. Dinsmore. 2016. Nest survival of tricolored blackbirds in California's Central Valley. The Condor 118(4): 850–861.
- Zeiner, D. C., W. F. Laudenslayer, Jr., K. E. Mayer, and M. White, eds, 1988–1990d. Northern California legless lizard In Life history accounts for species in the

Scot Graham
City of Morro Bay
January 7, 2021
Page 22

California Wildlife Habitat Relationships (CWHR) System. California's Wildlife.
Vol I-III. California Department of Fish and Game, Sacramento, California.

Zeiner, D. C., W. F. Laudenslayer, Jr, K. E. Mayer, and M. White. 1990. California's
Wildlife Volume I-III. California Department of Fish and Game, editor.
Sacramento, CA, USA.

Attachment 1

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

**PROJECT: City of Morro Bay General Plan
SCH No.: 2017111026**

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: MBKR Habitat Assessment and Trapping Surveys	
Mitigation Measure 3: MBKR Take Authorization	
Mitigation Measure 4: CRLF Surveys	
Mitigation Measure 6: LBV Habitat Assessment	
Mitigation Measure 8: LBV Surveys	
Mitigation Measure 9: LBV Take Authorization	
Mitigation Measure 10: TRBL Habitat Assessment	
Mitigation Measure 11: TRBL Surveys	
Mitigation Measure 13: TRBL Take Authorization	
Mitigation Measure 14: Habitat Assessment	
Mitigation Measure 15: Species-Specific Surveys	
Mitigation Measure 17: Habitat Assessment	
Mitigation Measure 18: Focused Surveys	
Mitigation Measure 19: Consultation	
Mitigation Measure 20: WPT Surveys	
Mitigation Measure 21: WPT Relocation	
Mitigation Measure 22: American Badger Surveys	
Mitigation Measure 24: LL Surveys	
Mitigation Measure 26: Habitat Assessment	
Mitigation Measure 27: Coast Horned Lizard Surveys	
Mitigation Measure 29: Special-Status Plant Habitat Assessment	
Mitigation Measure 30: Focused Surveys	
Mitigation Measure 32: Special-Status Plant Take Authorization	
<i>During Construction</i>	
Mitigation Measure 2: MBKR Avoidance	
Mitigation Measure 5: CRLF Avoidance	
Mitigation Measure 7: LBV Avoidance	
Mitigation Measure 12: TRBL Avoidance	
Mitigation Measure 16: Take Avoidance	
Mitigation Measure 23: American Badger Avoidance	

Mitigation Measure 25: LL Avoidance	
Mitigation Measure 28: Take Avoidance	
Mitigation Measure 31: Special-Status Plant Avoidance	