



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



May 15, 2025

Joe Enke, Public Works Director
City of Martinez, Public Works Department
525 Henrietta Street
Martinez, CA 94553
JEnke@cityofmartinez.org

Subject: Martinez Terminal Rail Restoration Project, Draft Environmental Impact Report, SCH No. 2023120466, City of Martinez, Contra Costa County

Dear Mr. Enke:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Environmental Impact Report (EIR) from the City of Martinez (City) for the Martinez Terminal Rail Restoration Project (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, we appreciate 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 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

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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Alteration (LSA) 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.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Martinez

Objective: The objective of the Project is to reestablish a former rail line on the south side of the existing Martinez Terminal in the City of Martinez, connecting to the existing Union Pacific Railroad (UPRR) tracks south of Waterfront Road. The rail spur would be located within the existing Martinez Terminal property and within UPRR right-of-way. Primary Project activities include temporary and permanent impacts to approximately 2.7 acres: consisting of grading and clearing of existing vegetation and dewatering to support construction of approximately 3,500 linear feet of new track. Ancillary improvements would be implemented at the Martinez Terminal to support operation of the reestablished rail spur, including the installation of piping, a pumping system, and other associated improvements. Additionally, a stormwater drainage and secondary containment system would be installed. No new types of services or operations at the facility are being proposed from those previously permitted, constructed, or used.

Location: City of Martinez, Contra Costa County, Waterfront Road and Waterbird Way, and 38.027145°, -122.100648°

Timeframe: Unknown at this time. Once construction begins, it will take approximately one year to complete.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City 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 document. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends below, CDFW concludes that an EIR is appropriate for the Project.

I. Mitigation Measure or Alternative and Related Impact Shortcoming

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

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special-status species in local or regional plans, policies, or regulations, or by CDFW or U.S. Fish and Wildlife Service (USFWS)?

COMMENT 1: Impacts to Special-Status and Listed Plant Species

Section 3.2.4 Impact Analysis, BIO-1 Page 3.2-17

Issue: The draft EIR does not adequately avoid, minimize or mitigate for potential impacts to special-status plant species.

Specific impact: Delta Tule Pea (*Thamnophis sirtalis tetrataenia*), Soft salty bird's beak (*Chloropyron molle*) and other listed plant species have been detected or are known to occur on the Project site and will be impacted by Project activities.

Why impact would occur: Listed plant species have been detected or are likely to occur within the Project area and Mitigation Measures BIO-A and BIO-B are not adequate to reduce potential direct or indirect impacts to special status plant species to less-than-significant.

Evidence impact would be significant: Mitigation Measure BIO-A consists of a rare plant survey and when rare plants are encountered that "avoidance and/or minimization measures shall be explored to protect the special-status plant populations. If avoidance is not possible, consultation with CDFW shall be required prior to project initiation to identify suitable compensatory mitigation." Listed plant species are likely to occur within the Project area and, other than avoidance, no mitigation measures should be implemented (e.g., relocation, salvage, and/or restoration) without consultation and/or an Incidental Take Permit (ITP) obtained from CDFW. MM BIO-B states that the Qualified Biologist will have all "necessary permits" for the handling of potentially occurring special-status species. 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.).

To minimize significant impacts: The Project proponent may seek related take authorization as provided by the Fish and Game Code.

COMMENT 2: Impacts to Nesting Birds

Section 3.2.4 Impact Analysis, BIO-1 Page 3.2-17

Issue: The draft EIR's Mitigation Measures BIO-B and BIO-C do not adequately avoid, minimize or mitigate for potential impacts to special-status and nesting bird species.

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Specific impact: Saltmarsh common yellowthroat (*Geothlypis trichas sinuosa*) and Suisun song sparrow (*Melospiza melodia maxillaris*) were observed during a field survey in addition to other special-status and/or listed bird species [e.g., northern harrier (*Circus hudsonius*) and osprey (*Pandion haliaetus*)] being observed in the area. Construction related noise and direct tree removal of nesting bird habitat is likely to occur during construction. Nesting birds are particularly sensitive to human disturbance. If nests within the area of disturbance are either undetected during surveys or unassessed for signs of distress, impacts to nesting birds as a result of Project activities may still be *potentially significant*.

Why impact would occur: Project activities, including ground disturbance, operation of heavy machinery, and the movement of workers may generate noise or visual disturbances which may in turn result in nest abandonment, reduced reproductive success, or loss or reduced health or vigor of eggs or young. If nesting birds occur within the Project site and are undetected during surveys, Project activities, including pruning, tree removal, and vegetation removal may inadvertently crush, destroy, or remove active nests.

Evidence impact would be significant: Take of nesting birds, birds in the orders Falconiformes or Strigiformes, and migratory nongame bird as designated in the federal Migratory Bird Treaty Act (MBTA) is a violation of Fish and Game Code §§§ 3503, 3503.5, 3513.

To Reduce Impacts to Nesting Birds to a Less-Than-Significant Level: CDFW recommends the following modifications to MM BIO-C and that the Project proponent seek related take authorization as provided by the Fish and Game Code.

BIO-C - Nesting Bird Season. Nesting bird season should be defined as February 1 through September 15.

BIO-C – Survey Methods and Radii. CDFW recommends the following minimum survey radii: (1) 250 feet for passerines, and (2) 1,000 feet for raptors.

BIO-C – Active Nest Buffers. CDFW recommends the following typical protective buffers for nesting birds: 1) 1,000 feet for raptors and 250 feet for passerines. No Project personnel or equipment shall be allowed to enter the protective buffer until the Qualified Biologist determines that the young have fully fledged and will no longer be adversely affected by the Project.

BIO-C – Biological Monitoring. A Qualified Biologist shall observe any identified active nests prior to the start of any construction-related activities to establish a behavioral baseline of the adults and any nestlings, and the nest site(s) shall be monitored by the biologist daily to see if the birds are stressed by the construction activities and if the protective buffer needs to be increased.

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COMMENT 3: Impacts to Aquatic Habitat

Section 3.2.4 Impact Analysis, BIO-3 Page 3.2-19

Issue: The draft EIR's Mitigation Measures BIO-3 inadequately assumes that a tidally influenced waterway impacted by the Project is not subject to CDFW's LSA regulatory authority. (Fish & G. Code, § 1600 et seq.). This oversight could lead to unacknowledged impacts to this waterway and violation of Fish & G. Code, § 1600 et seq.

Specific impact: Aquatic feature two contains perennial surface flow and is connected via a high flow culvert to tidal and navigable waters. As such, aquatic species likely use the habitat at some portion of the year. This feature will be impacted by Project activities and is subject to Fish and Game Code.

Why impact would occur: Construction of the Project will temporarily and permanently impact this aquatic feature.

Evidence impact would be significant: CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for Project activities affecting river, lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank (including associated riparian or wetland resources); or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, drainage ditches, washes, watercourses with a subsurface flow, and floodplains is generally subject to notification requirements. In addition, infrastructure installed beneath such aquatic features, such as through horizontal directional drilling, is also generally subject to notification requirements. Therefore, any impact to the mainstems, tributaries, or floodplains or associated riparian habitat caused by the proposed Project will likely require an LSA Notification. CDFW may not execute a final LSA Agreement until it has considered the final EIR and complied with its responsibilities as a responsible agency under CEQA.

To minimize significant impacts: The project should provide notification under Fish and Game Code Section 1600 for LSA.

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

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Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

CONCLUSION

CDFW appreciates the opportunity to comment on the draft EIR to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Elijah Portugal, Senior Environmental Scientist, at (707) 428-2088 or Elijah.Portugal@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell

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Erin Chappell
Regional Manager
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse, Sacramento