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

December 8, 2025

Katie Hart, Water Resource Control Engineer
Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
Kathryn.Hart@waterboards.ca.gov

Subject: Waste Management Unit Restoration Project, Initial Study/Mitigated Negative Declaration, SCH No. 2025110098, Contra Costa County

Dear Katie Hart:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an Initial Study/Mitigated Negative Declaration from the Regional Water Quality Control Board (RWQCB) for the Waste Management Unit Restoration Project (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, 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.

REGULATORY AUTHORITY

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the Project. Issuance of a CESA ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA ITP.

California Fully Protected Species

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 and Game Code, §§ 3511, 4700, 5050, & 5515).

The Project has the potential to impact Ridgway's rail (*Rallus obsoletus*) and California black rail (*Laterallus jamaicensis coturniculus)*, both California fully protected and CESA listed species. The Project also has the potential to impact the fully protected salt-marsh harvest mouse (*Reithrodontomys raviventris).*

Raptors and Other Nesting Birds

CDFW has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and

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3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

PROJECT DESCRIPTION SUMMARY

Proponent: Avon Remediation Team

Objective: The objective of the Project is to permanently close Waste Management Unit (WMUs) and restore wetlands at the Martinez Renewable Fuels Facility. Primary Project activities will include excavation and consolidation of waste material and associated soils, treatment of contaminated soils, fill placement, groundwater sampling, and construction of a final cover or cap.

Total impact volumes will be approximately 100,000 cubic yards of site preparation (50,000 cubic-yards of excavation material and 50,000 cubic yards of backfilled slurry), 180,800 cubic-yards of excavation waste material, and 123,700 cubic yards of backfill.

Location: The Project WMUs are located on facility-owned property. The project WMU sites are located approximately two miles east of the Benicia-Martinez Bridge and Interstate-680 along Waterfront Road, City of Martinez, Contra Costa County, CA, 94553.

Timeframe: WMU closure construction would be completed over the course of eight years.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations to assist RWQCB in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

I. Mitigation Measure or Alternative and Related Impact Shortcoming

COMMENT 1: Nesting Birds (General)

Mitigation Measure BIO-1 does not include an adequate survey radius relative to nest sites or nest trees that could prevent potential impacts to species with respect to raptors. The measure does not provide adequate details about nest monitoring timeline and requirements to ensure the qualified biologist does not miss signs of disturbance and/or distress. Without an adequate protocol specified, Project related impacts to nesting birds could lead to significant impacts to nesting birds including, but not limited to nest abandonment, nest failure, impacts to availability of forage, chick mortality and resultant population decline.

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To reduce impacts to less-than-significant:

CDFW recommends the IS/MND replace Mitigation Measure BIO-1 with the following revised language to ensure that significant impacts to bird species resulting from the Project are mitigated to a level of less-than-significant.

Construction work should take place outside of the February 15 to September 15 bird nesting seasonal window to the maximum extent practicable. If construction is to be conducted during the nesting season, the Project Applicant is responsible for ensuring that the Project does not result in any violation of the Migratory Bird Treaty Act or Fish and Game Code. A qualified biologist shall conduct focused pre-construction nesting bird surveys throughout the Project area no more than five days prior to the initiation of on-site project-related activities. Surveys will be conducted in all potential habitat located at, and adjacent to, Project work sites and in staging and storage areas. The minimum survey radii surrounding the work area will be the following: (1) 250 feet for Passerines; (2) and 1,000 feet for raptors such as Buteo spp. In the event that there is a lapse in construction activities for seven days or more, a qualified biologist will conduct additional focused pre-construction nesting bird surveys in areas of potential habitat again before project activities can be reinitiated. If an active nest is found, the qualified biologist may consult with CDFW if needed regarding appropriate action to comply with Fish and Game Code.

- *Active Nest Buffers. Active nest sites and protective buffer zones shall be designated as "ecologically sensitive areas" where no project-related activities or personnel may enter (while occupied or in use for the season in the case of multi clutch bearing species) during the course of nesting bird season with the establishment of a fence barrier or flagging surrounding the nest site. The qualified biologist will determine the necessary buffer, in consultation with CDFW if needed, to protect nesting birds based on existing site conditions, such as construction activity, topography, and line of sight, and will increase buffers as needed to provide sufficient protection of nesting birds and their natural behaviors.*

- *Active Nests. A qualified biologist shall observe any identified active nests prior to the start of any Project-related activities to establish a behavioral baseline of the adults and any nestlings. Once Project activities commence, all active nests shall be continuously monitored by a qualified biologist to detect any signs of disturbance and behavioral changes as a result of the Project. In addition to direct impacts, such as nest destruction, nesting birds might be affected by noise, vibration, odors and movement of workers or equipment. If signs of disturbance and behavioral changes are observed, the qualified biologist shall halt project activities causing that change until the nestlings have fledged, and the nest is determined to be inactive.*

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COMMENT 2: Burrowing Owl

Burrowing owl (*Athene cunicularia*) is currently a candidate species under CESA and is afforded the same protection as a CESA-listed species (CEQA Guidelines, §15380, subds.(b)). Unauthorized take of this species pursuant to CESA is a violation of Fish and Game Code section 2080 et seq.

The IS/MND indicates that the Project could result in the temporary loss of potential foraging habitat for burrowing owl that use the study area for overwintering. One observation of burrowing owl has been detected directly within the Project site (CNDDB, accessed November 2025). While the IS/MND implements BIO-2 addressing burrowing owl, this measure only includes pre-construction survey measure requirements and mitigation. Without adequate no-work buffers and other protections, direct and/or indirect impacts to burrowing owl are likely to occur.

Direct mortality could occur through crushing of adults or young within burrows, loss of nesting burrows, loss of nesting habitat, loss of foraging habitat resulting in reduced nesting success (loss or reduced health or vigor of eggs or young), nest abandonment, and reduced frequency or duration of care for young resulting in reduced health or vigor of young. This could occur due to excavation for placement of modules, excess noise and disturbance, and earth moving equipment. Because of their highly specialized, ground-dwelling lifestyle and dependence on underground tunnels, burrowing owl are extremely vulnerable to direct and indirect impacts of grading, disking, tilling, earthmoving, burrow blockage, and eradication of ground squirrels.

To reduce impacts to less-than-significant:

Burrowing Owl Buffers

A Designated Biologist shall conduct at least two surveys using the methods described in the Staff Report on Burrowing Owl Mitigation, dated March 7, 2012 (https://wildlife.ca.gov/Conservation/%E2%80%8C%E2%80%8CSurvey-Protocols#377281284-birds). A Designated Biologist shall visually inspect any pipes, debris piles, culverts, pallet stacks, burrow exclusion installations, or similar structures for burrowing owl before the material is moved, buried, or capped. A Designated Biologist shall inspect all open holes and trenches within the Project Area at a minimum of twice a day and immediately prior to backfilling. At the end of each workday, the Lead Agency shall place an escape ramp at each end of trenches or holes to allow any animals that may have become trapped in the trench or hole to climb out overnight. The ramp may be constructed of either dirt fill or wood planking or other suitable material that is placed at an angle no greater than 30-45 degrees.

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Burrowing Owl Monitoring

CDFW recommends adding a Mitigation Measure with the following language:

> *The Designated Biologist(s) shall be present during construction activities to monitor the behavior of any burrowing owl. The Designated Biologist(s) shall have the authority to order stop work if burrowing owls exhibit distress and/or abnormal behavior for (e.g., excessive vocalizations, defensive flights at intruders, flushing frequently, or otherwise displaying agitated behavior).*

Burrow Avoidance

CDFW recommends adding a Mitigation Measure with the following language:

A qualified biologist shall clearly delineate a no-disturbance buffer around all burrowing owl burrows, including nesting, roosting, and satellite burrows, or the entire burrow complex within and adjacent to within 150 meters of the Project Area with posted markers demarking the area to avoid, using stakes, flags, and/or rope or cord to minimize the disturbance of burrowing owl habitat. Buffers shall be determined based upon the time of year and level of disturbance as described in the CDFW 2012 Staff Report. If burrows cannot be fully avoided, CDFW shall be consulted. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Burrowing Owl Avoidance or Take Authorization

CDFW recommends that the Project proponent obtain take authorization from CDFW through issuance of an ITP if full avoidance of burrowing owl and occupied burrow complexes during construction and/or operations is not feasible. The IS/MND must include all biologically appropriate and feasible take avoidance measures. If permanent or temporary impacts of the proposed Project to burrowing owl foraging and/or nesting habitat cannot be completely avoided, the IS/MND should include measures to minimize the impacts of construction on owls and their habitat, and effective compensatory mitigation to offset all habitat loss.

COMMENT 3: Ridgway's Rail

The IS/MND acknowledges that Ridgway's rail has been observed within the nearby Point Edith Marsh located North of the WMU 31 Project site. The most recent protocol level survey conducted for Ridgway's rail was in 2017. These survey results are outdated since conditions on the Project site could have changed over the past eight years. Additionally, even if Ridgway's rail is not found directly on the Project site, operation of heavy equipment and associated activities may cause breeding rails to temporarily or permanently leave adjacent sites where they are nesting. Construction

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activities may include the temporary or permanent installation of fencing, posts, poles, or other structures that may provide perching opportunities for avian predators of Ridgway's rails. Nest abandonment or reduced frequency or duration of care for young, as well as decreased time spent foraging and roosting, resulting in reduced health or vigor of all life stages may occur as a result of project construction activities.

Ridgway's rail is a state fully protected species. Loss of emergent saline wetland habitat and upland refugia in and adjacent to the San Francisco Bay has contributed to declines in local populations of both rail species. Project impacts may further population declines of these species, including cumulative impacts resulting in the restriction of their range.

To reduce impacts to less-than-significant:

CDFW recommends incorporating the following language into mitigation measure BIO-4 to address impacts to Ridgway's rail.

Rail Surveys

CDFW recommends presence is presumed or presence/absence surveys are conducted following the *2015 California Clapper Rail Survey Protocol* (*https://www.fws.gov/media/california-ridgways-clapper-rail-survey-protocol*) each year of construction in all suitable habitat within the Project. This protocol is recommended for conducting presence/absence surveys of California Ridgway's rail prior to Project construction (as opposed to other available protocols that may be more suitable for long-term monitoring purposes).

Rail Buffers

The IS/MND should disclose and assess an appropriate buffer. Without additional noise reducing modifications, a 700-foot no-work buffer should be implemented in absence of protocol-level surveys between the location of construction activities and any current-year breeding rail detections, if construction cannot be avoided during the rail breeding season. The determined no-work buffers should be clearly marked with fencing or flagging to exclude workers from entering the no-work zone. Note that these features may be appropriate regardless of time of year to minimize impacts to rails in general.

Authority to Stop Work

The IS/MND should include language specifying the Qualified Biologist will have authority to stop work any time construction activities appear to cause disturbance to nesting rails (e.g., rails vocalize or fly away from a nest) or an active rail nest is found.

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Avoid Predator Perching Structures

The IS/MND should include language that strives to avoid the temporary or permanent construction of features that may provide perching opportunities for avian predators. If needed for the Project, such features may be retrofitted with anti-perching devices to reduce the likelihood that avian predators will use them to perch.

COMMENT 4: Salt-Marsh Harvest Mouse

The IS/MND states there is a moderate potential for salt-marsh harvest mouse to occur within WMUs 10/11/14, 31, and 32. These WMUs contain wetland communities suitable for this species. However, the habitat mapping was based on site visits conducted in March of 2013. These results are outdated since conditions on the Project site could have changed over the past eight years. The quantity of temporary and permanently impacted habitat types may have changed over time.

Additionally, while the IS/MND addresses impacts to salt-marsh harvest mouse habitat based on the assessed temporary and permanent impacts, this species is State Fully Protected and impacts to the species must be fully avoided. The IS/MND does not include any avoidance measures to ensure that CESA take is avoided.

To reduce impacts to less-than-significant:

CDFW recommends the IS/MND be revised to avoid impacts to salt-marsh harvest mouse:

Habitat Surveys Prior to Construction

An approved qualified biologist shall conduct a salt-marsh harvest mouse habitat survey and assessment prior to the start of construction to determine all potential salt-harvest mouse habitat.

Qualified Biologist Inspection

Prior to Project activities (e.g., vegetation removal, disturbance to vegetation) occurring in potential salt-marsh harvest mouse habitat each day, an approved qualified biologist, familiar with salt-marsh harvest mice, shall walk through and inspect suitable habitat and search for signs of harvest mice or other sensitive wildlife and plants. If a salt-marsh harvest mouse is discovered, no work shall occur within 150 feet of that location. Personnel, under the supervision of the qualified biologist, will remove vegetation using only hand tools (e.g., weed-eater, hoe, rake, trowel, shovel, grazing) so that vegetation is no taller than two inches. If string trimmers (a.k.a. weed whackers) are used, they shall be used to the minimum extent necessary and shall be used to take down vegetation height a couple inches at a time so that the biological monitor can search for

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potential salt-marsh harvest mouse nests. If a nest is discovered, all work shall stop immediately, the Qualified Biologist shall implement a no work and no personnel protective buffer surrounding the nest and CDFW shall be notified.

COMMENT 5: Special-Status Plants

The IS/MND states that protocol-level botanical surveys were conducted within the Project areas. However, it is unclear what protocol the Qualified Botanist and Qualified Biologist used when conducting the survey. Additionally, the timing of the survey conducted was not during the appropriate bloom period for special-status plant species with the potential to occur onsite. For instance, page 204, section 2.2 of the IS/MND only specifically identifies protocol-level botanical survey conducted on September 21 and 23, 2011. Otherwise, survey timeframes were only described as being conducted as part of the Biological Resources Assessment (WRA 2009). Also, the last surveys were conducted in 2011, which is a large gap in time from the anticipated start of project construction. The site conditions are likely to have changed from the time the surveys were last completed. Special-status plants are often narrowly distributed endemic species. They are susceptible to habitat loss and habitat fragmentation resulting from development, vehicle and foot traffic, and introduction of non-native plant species.

Appropriate methodologies for species detection should be clearly outlined and conducted well in advance of the anticipated start of construction. If CESA listed plants that may be impacted by the Project go undetected, the Project may result in mortality from direct impacts or degradation of habitat adjacent to ground disturbance.

To reduce impacts to less-than-significant:

Protocol-Level Surveys:

CDFW recommends surveys be conducted according to the following protocols and the IS/MND be revised to include the results from those botanicals surveys:

> *The Project shall complete an additional two years of protocol-level botanical surveys and incorporate the results into a revised IS/MND. The botanical survey results shall follow CDFW's 2018 Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities, including, but not limited to conducting surveys during appropriate conditions, utilizing appropriate reference sites, and evaluating all direct and indirect impacts such as altering off-site hydrological conditions where the above species may be present. Surveys conducted during drought conditions may not be acceptable. If the botanical surveys result in the detection of the above CESA listed plants that may be impacted by the Project, or the presence of these species is assumed, the Project applicant shall obtain a CESA ITP from CDFW prior to construction and comply with all requirements of the ITP.*

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Surveys conducted during drought conditions may not be acceptable. If the botanical surveys result in the detection of CESA listed plants that may be impacted by the Project, or the presence of these species is assumed, the Project applicant shall obtain a CESA ITP from CDFW prior to construction and comply with all requirements of the ITP.

The IS/MND should be revised to include all species of special-status plants that will be impacted, and a well-developed, robust proposal for how the Project would be re-designed to avoid, minimize and/or mitigate impacts to those special-status plants. The applicant should provide a copy of the special-status plant survey results and proposed Mitigation and Monitoring Plan to CDFW for review and acceptance. Additionally, a Mitigation and Monitoring Plan should be prepared and implemented prior to project implementation if special-status plants, including those with a rare plant ranking, are found during surveys.

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

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (See 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 IS/MND to assist RWQCB in identifying and mitigating project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Mia Bianchi, Senior Environmental Scientist (Specialist), at Mia.Bianchi@wildlife.ca.gov;

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or Sara Kern, Senior Environmental Scientist (Supervisory), at Sara.Kern@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Erin Chappell
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Erin Chappell
Regional Manager
Bay Delta Region

ec: Office of Land Use and Climate Innovation (SCH No. 2025110098)

REFERENCES

California Department of Fish and Wildlife (CDFW). 2025. California Natural Diversity Database (CNDDB) Management Framework. California Department of Fish and Wildlife. Sacramento, CA. Website https://wildlife.ca.gov/Data/BIOS [accessed November 18, 2025].