



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 Bay Delta Region
 2825 Cordelia Road, Suite 100
 Fairfield, CA 94534
 (707) 428-2002
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



December 11, 2025

Dana Ayers, Contract Planner
 City of Richmond
 450 Civic Center Plaza
 Richmond, CA 94804
dayers@migcom.com

Subject: Richmond Terminal Rail Expansion and Truck Rack Improvements
 Project, Initial Study/Mitigated Negative Declaration, SCH No.
 2025110596, City of Richmond, Contra Costa County

Dear Dana Ayers:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the City of Richmond for the Richmond Terminal Rail Expansion and Truck Rack Improvements 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

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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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.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

REGULATORY REQUIREMENTS

California Endangered Species Act and Native Plant Protection Act

A CESA Incidental Take Permit (ITP) must be obtained from CDFW if the Project has the potential to result in "take" of plants or animals listed under CESA or the Native Plant Protection Act (NPPA), either during construction or over the life of the Project. Under CESA, "take" means "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill" (Fish & G. Code, § 86). CDFW's issuance of an ITP is subject to CEQA, and to facilitate permit issuance, any project modifications and mitigation measures must be incorporated into the CEQA document analysis, discussion, and mitigation monitoring and reporting program. If the Project will impact CESA- or NPPA-listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain an ITP.

CEQA requires a mandatory finding of significance if a project is likely to substantially impact threatened or endangered species (Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064 & 15065). In addition, pursuant to CEQA, the Lead Agency cannot approve a project unless all impacts to the environment are avoided or mitigated to less-than-significant levels, or the lead agency makes and supports Findings of Overriding Consideration (FOC) for impacts that remain significant despite the implementation of all feasible mitigation. FOC under CEQA, however, does not eliminate the Project proponent's obligation to comply with the Fish and Game Code.

Lake and Streambed Alteration Agreement

CDFW requires a Lake and Streambed Alteration (LSA) Notification, pursuant to Fish and Game Code section 1600 et seq., for Project activities affecting rivers, 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,

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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 Initial Study(IS)/MND and complied with its responsibilities as a responsible agency under CEQA.

Raptors and Other Nesting Birds

CDFW has authority over actions that may result in the disturbance or destruction of active bird nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include section 3503 (regarding unlawful take, possession, or needless destruction of the nests or eggs of any bird), section 3503.5 (regarding the take, possession, or destruction of any birds-of-prey or their nests or eggs), and section 3513 (regarding unlawful take of any migratory nongame bird).

PROJECT DESCRIPTION SUMMARY

Proponent: TransMontaigne Operating Company, LP

Objective: The objective of the Project is to expand rail services at the Richmond Terminal by constructing new track to provide increased rail capacity and relocating and consolidating existing truck racks from two bays into one combined four-bay truck rack. Additionally, an underground storage tank which holds petroleum contact wastewater from the truck racks will be demolished and replaced with an above-ground storage tank. Primary Project activities include the demolition of existing paving; excavation; ground stabilization or compaction; installation of new piping, pipe supports, product pump, rail access platforms, rail, and ties for track construction; drainage improvements as needed for track construction; extension of steam piping to reach the new rail car positions for track construction; installation of concrete with rollover berms for truck rack construction; and installation of a new shallow sump and pump to in association with construction of the new above-ground water storage tank. No trees will be removed during Project construction.

Location: The Project site comprises approximately ten acres of the TransMontaigne Operating Company's existing Richmond Terminal site, located at 488 Wright Avenue in Richmond, Contra Costa County, California, along the Santa Fe Channel of the Richmond Inner Harbor. The Project is located at 37.919444°N, -122.366944°W.

Timeframe: Construction of the Project is anticipated to occur over a 12-month period beginning in the spring or summer of 2025.

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COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City of Richmond 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, CDFW concludes that a Mitigated Negative Declaration is appropriate for the Project.

I. Mitigation Measure or Alternative and Related Impact Shortcoming

COMMENT 1: Burrowing Owl

Issue: Mitigation Measure BIO-2 is not adequate to avoid or reduce potential Project impacts to burrowing owl (*Athene cunicularia*) below a level of significance.

Mitigation Measure BIO-2 proposes to establish non-disturbance buffers to protect occupied burrows but does not disclose how the size of non-disturbance buffers will be determined. Without this clarity, CDFW cannot conclude that the non-disturbance buffers will be sufficient to protect burrowing owls from Project-related disturbance. Additionally, if occupied burrows will not be avoided, Mitigation Measure BIO-2 proposes to implement eviction of owls as a method to reduce Project-related impacts to burrowing owls to less-than-significant levels; however, eviction of owls has been shown to be an activity that can result in mortality and take and eviction of burrowing owls is itself a potentially significant impact under CEQA (CDFW, 2012).

Specific impacts and why they would occur: Construction activities and the movement of equipment and workers through the Project site may generate noise and visual disturbances to burrowing owls. Disturbance at any time of year may result in flushing of burrowing owls from their burrows, potentially resulting in increased risk of injury or mortality by vehicle strike or predation. If disturbance occurs during the breeding season, it may cause burrowing owls to abandon nests or reduce the frequency or duration of care for young, resulting in reduced health or vigor of young.

Evicting burrowing owls from nesting, roosting, and satellite burrows may result in habitat loss for western burrowing owl. The temporary or permanent closure of burrows to facilitate passive relocation may result in significant loss of burrows and habitat for reproduction and other life history requirements. The IS/MND describes the surrounding land uses as industrial, and immediately adjacent habitat for evicted burrowing owls to relocate to is likely not present on the Project site. Depending on the proximity and availability of alternate habitat, loss of access to burrows will also likely result in varying levels of increased stress on burrowing owls and could

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depress reproduction, increase predation, increase energetic costs, and introduce risks posed by having to find and compete for available burrows (CDFW, 2012).

Evidence impacts would be significant: Burrowing owl is currently a candidate for listing as a protected species under CESA. The 2024 Burrowing Owl Petition identifies habitat loss, fragmentation, and degradation as the primary threat to burrowing owl. If eviction of burrowing owls is implemented as proposed by Mitigation Measure BIO-2 and crucial habitat is lost, the Project may result in the substantial reduction of habitat of a wildlife species. Such impacts are considered a Mandatory Finding of Significance, pursuant to CEQA Guidelines sections 15065, subdivision (a)(1) and 15380.

The 2024 Petition lists passive relocation and direct mortality from predation and anthropogenic causes as additional threats to burrowing owl. The 2024 Petition indicates that burrowing owl are near extirpation in western Contra Costa County and that breeding owls are declining everywhere they remain the Bay Area (Center for Biological Diversity et. al., 2024). Mortality can be particularly impactful for fragmented or remnant populations, as small, isolated colonies are at higher risk of extinction (Center for Biological Diversity et. al., 2024). If implementation of Mitigation Measure BIO-2 is insufficient to protect burrowing owl from direct or indirect take, or if passive relocation efforts undertaken by the Project result in direct or indirect take of burrowing owl, such mortality may potentially result cause a local population of burrowing owl to drop below self-sustaining levels, threaten to eliminate a burrowing owl community, or substantially reduce the number or restrict the range of a rare or endangered animal. Such impacts are considered a Mandatory Finding of Significance, pursuant to CEQA Guidelines sections 15065, subdivision (a)(1) and 15380.

Due to its status as a candidate species under CESA, the burrowing owl is afforded the same protection as CESA-listed species (CEQA Guidelines, §15380(b)). Unauthorized take of this species pursuant to CESA is a violation of Fish and Game Code section 2080 et. seq.

To reduce impacts to less-than-significant: CDFW recommends that Mitigation Measure BIO-2 is replaced with the following potentially feasible measures to reduce impacts to burrowing owl to less-than-significant levels:

Pre-Construction Burrowing Owl Surveys. No more than 14 days prior to Project activities, a qualified biologist shall conduct at least two surveys following the methods described in CDFW 2012 Staff Report on Burrowing Owl Mitigation, Appendix D (2012), at least seven days apart, with the final survey conducted no more than 48 hours prior to beginning Project activities. Surveys shall encompass the Project site and a sufficient buffer zone to detect owls nearby that

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may be impacted commensurate with the type of disturbance anticipated, as outlined in the CDFW 2012 Staff Report, and include burrow surrogates such as culverts, piles of concrete or rubble, and other non-natural features, in addition to burrows and mounds. If a lapse in Project-related work of 14 calendar days or longer occurs, additional surveys shall be required. If occupied burrows are detected during surveys, CDFW shall be consulted prior to Project commencement.

Burrow Avoidance. *A qualified biologist shall clearly delineate a no-disturbance buffer around all burrowing owl nesting, roosting, and satellite burrows or the entire burrow complex within and adjacent to 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. The qualified biologist shall change the method of marking the no-disturbance buffer if corvids, raptors, or other predators are observed perching on marking materials. The qualified biologist shall limit the materials necessary to mark the no-disturbance buffer to that which is necessary for identification of the site. The qualified biologist shall delineate the no-disturbance buffer with different materials than those used to delineate the Project area. The Project proponent shall remove and properly dispose of all materials used for delineation immediately upon completion of the Project.*

If avoidance buffers cannot be implemented or disturbance to burrows cannot be fully avoided, CDFW shall be consulted prior to Project commencement. Take authorization may be obtained through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) for compliance with CESA.

Burrowing Owl Mitigation. *If the Project would impact an unoccupied nesting burrowing owl burrow or burrow surrogate (i.e., a burrow known to have been used in the past three years for nesting), or an occupied burrow (where a non-nesting owl would be evicted as described above), impacts to burrowing owl habitat should be mitigated for through purchase of burrowing owl habitat credits from a CDFW-approved mitigation bank or through recording a conservation easement and implementing and funding a long-term management plan in perpetuity.*

COMMENT 2: Roosting Bats

Issue: Implementation of Mitigation Measure BIO-3 may not be sufficient to protect roosting bats that may inhabit structures identified for removal in the Project Description. Additionally, although CDFW may not have discretionary approval of the Project, Mitigation Measure BIO-3 requires coordination with CDFW regarding roost

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removals and suggests that The Project may seek approval from CDFW for roost removal plans prior to implementation.

Specific impacts: If occupied roosts are removed while bats are present, bats may be injured or crushed, resulting in direct mortality. Depending upon the season, disturbance to roosts or habitat loss may result in indirect take. Even low levels of human disturbance during the maternity season can cause mothers to abandon roost sites, which may result in the mortality of young bats (Beck & Rudd, 1960). Many bat species hibernate or enter torpor to conserve energy at a time when resources are scarce, and if roosts are disturbed or removed when bats have entered the hibernation period, bats may be forced to expend critical energy on rousing, or evasion and location of a suitable replacement roost (O'Shea et. al., 1977; Boyles & Brack 2009).

Why impacts would occur: Structures are identified for modification or removal in the Project Description, but Mitigation Measure BIO-3 does not include proposed methods to reduce potential impacts to roosting bats during structure removal. The IS/MND indicates the Project site and adjacent areas may offer roosting opportunities for bats (section 4.4, page 4-21). The Project site is within range of several special-status species, including pallid bat (*Antrozous pallidus*), a crevice-roosting bat that has been documented to utilize anthropogenic structures and rock crevices (Baker et. al., 2008). If present within the Project site, implementation of Mitigation Measure BIO-3 may not protect structure-roosting bats such as the pallid bat during roost removal.

If roosts must be removed to facilitate Project construction, Mitigation Measure BIO-3 requires coordination with CDFW prior to roost removal and indicates that a roost removal plan may be implemented with approval by CDFW. The IS/MND does not identify any potential permits or approvals that may be required by CDFW in Table 2.B, section 2.4 (Permits and Regulations). While CDFW appreciates the opportunity to coordinate on bat roost removal and mitigation as a Trustee Agency, CDFW cannot guarantee availability to review plans or coordinate with the Project on bat roost removal if CDFW does not have discretionary authority over the Project. CDFW therefore cannot conclude that implementation of Mitigation Measure BIO-3 will be sufficient to mitigate potential Project-related impacts to roosting bats to less-than-significant levels.

Evidence Impact would be significant: Project activities that result in the direct mortality of bats, such as the removal of occupied bat roosts, or indirect mortality of bats, such as loss of habitat which in turn causes the loss of a maternity colony or hibernating colony, may be considered "take" under California Fish and Game Code (Fish & G. Code, § 86). Bats are considered non-game mammals and are afforded protection by State law from take and/or harassment (Fish & G. Code, § 4150; Cal.

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Code of Regs, § 251.1). Furthermore, bat species designated as California State Species of Special Concern, such as the pallid bat, qualify as rare, threatened, or endangered species under CEQA (CEQA Guidelines, § 15380).

Recommendation: CDFW recommends that the City of Richmond maintains final approval of bat roost removal and mitigation as the Project Lead Agency. CDFW also recommends that the following potentially feasible mitigation measures are added to Mitigation Measure BIO-3 to protect structure-roosting bats and to assist the Lead Agency in ensuring Project-related impacts to roosting bats are mitigated to a less-than-significant level in the event that CDFW cannot coordinate with the Project on roost removal:

***Roost Removal.** The Project shall avoid removal of structures that provide potential bat roosting habitat during bat maternity season (April 15 – September 1) and hibernation season (October 15 – March 1). If these seasonal windows cannot be avoided, the qualified biologist shall conduct visual surveys for bats of any potential roosts, as well as daytime and evening acoustic surveys conducted no more than **14 days** prior to removal of potential habitat. If bats are found or suspected to be roosting within the Project site, the qualified biologist shall identify the species, estimated quantity present, roost type, and roost status. The qualified biologist shall avoid disturbing bats during surveys. Under no circumstances shall an active maternity roost be removed or disturbed. Work on structural refugia shall not be performed under any of the following conditions: during any precipitation events, when ambient temperatures are below 4.5 degrees Celsius, when windspeeds exceed 11 miles per hour, and/or any other condition which may lead to bats seeking refuge.*

***Bat Mitigation and Monitoring Plan.** If bats are found to be roosting within structures proposed for modification or removal by the Project, the qualified biologist shall develop a Bat Mitigation and Monitoring Plan, which shall include: (1) an assessment of all direct and indirect Project impacts to bats based on survey results; (2) effective avoidance and minimization measures to protect bats based on species and roost type(s) to be impacted; (3) compensatory mitigation for permanent impacts to maternity roosts if impacted. Compensatory mitigation shall be appropriate for the species impacted and commensurate with the impacts, and may include installation of replacement habitat on-site (e.g. bat boxes) on a temporary and permanent basis. The Bat Mitigation and Monitoring Plan shall describe any monitoring and maintenance activities necessary to ensure compensatory habitat remains effective.*

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ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity 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>.

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 (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 the City of Richmond in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Torrey Soland, Environmental Scientist, at (707)) 266-2878 or Torrey.Soland@wildlife.ca.gov; or Sara Kern, Senior Environmental Scientist (Supervisory), at (916) 531-4465 or Sara.Kern@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Erin Chappell
B77F9A6211EF486
Erin Chappell
Regional Manager
Bay Delta Region

cc: Office of Land Use and Climate Innovation, State Clearinghouse, Sacramento

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