

State of California  
Department of Fish and Wildlife



# Memorandum

Date: November 24, 2020

To: Ms. Lindsay Vivian  
California Department of Transportation  
District 4  
111 Grand Street, MS-8B  
Oakland, CA 94612  
[Lindsay.Vivian@dot.ca.gov](mailto:Lindsay.Vivian@dot.ca.gov)

Governor's Office of Planning & Research

Nov 24 2020

STATE CLEARINGHOUSE

DocuSigned by:

From: Mr. Gregg Erickson, Regional Manager  
California Department of Fish and Wildlife-Bay Delta Region, 2825 Cordelia Road, Suite 100, Fairfield, CA 94534

Subject: Oakland Alameda Access Project, Notice of Availability of a Draft Environmental Impact Report, SCH No. 2017092041, Alameda County

The California Department of Fish and Wildlife (CDFW) has reviewed the Notice of Availability (NOA) for the proposed draft Environmental Impact Report (EIR) for the Oakland Alameda Access Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup> CDFW is submitting comments on the NOA as a means to inform the California Department of Transportation (Caltrans) as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

CDFW is a Trustee Agency with responsibility under CEQA §15386 for commenting on projects that could impact fish, plant and wildlife resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as the California Endangered Species Act (CESA) Permit, the Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Agreement and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources. Pursuant to our jurisdiction, CDFW has the following concerns, comments, and recommendations regarding the Project.

**Proponent:** California Department of Transportation, District 4

**Project Location and Description:** Caltrans as the lead agency in partnership with the Alameda County Transportation Commission (Alameda CTC), proposes to improve mobility and accessibility, traffic operations, and bicycle and pedestrian facilities through the Oakland Alameda Access Project on State Route 260 (SR-260) from post mile (PM) 0.78 to PM 1.90 and on Interstate 880 (I-880) from PM 30.47 to PM 31.61 in the cities of Oakland and Alameda in Alameda County, California.

<sup>1</sup> 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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Caltrans, acting as the lead agency, proposes the following alternatives: No-Build (No-Action) Alternative: Under the No-Build Alternative, no improvements to bicycle or pedestrian connectivity or safety. Build Alternative: the Build Alternative proposes to remove and modify the existing freeway ramps and to modify the Posey Tube exit in Oakland. The Build Alternative would improve access to Northbound (NB) and Southbound (SB) I-880 from the Posey Tube via a right-turn-only lane from the Posey Tube to 5<sup>th</sup> Street, and a new horseshoe connector at Jackson Street below the I-880 viaduct that would connect to the existing NB I-880/Jackson Street on-ramp. The proposed Project would also reconstruct and shift the existing WB I-980/Jackson Street off-ramp to the south. The Webster Tube entrance at 5<sup>th</sup> Street and Broadway would be shifted to the east to create more space for trucks to make the turn from Broadway into the Webster Tube. A bulb-out would be constructed to extend the sidewalk, reducing the crossing distance and allowing improved visibility of pedestrians on the southeast corner.

The proposed Project would remove the NB I-880/Broadway off-ramp and widen the NB I-880/ Oak Street off-ramp to 6<sup>th</sup> Street, which would become the main NB I-880 off-ramp to downtown Oakland and to Alameda. 6<sup>th</sup> Street would become a one-way through street from Oak Street to Harrison Street and a two-way street from Harrison Street to Broadway. The proposed project would add a Class IV two-way cycle track on 6<sup>th</sup> Street between Oak and Washington streets and on Oak Street between 3<sup>rd</sup> and 9<sup>th</sup> streets. It would implement bicycle and pedestrian improvements at the Tubes' approaches in Oakland and Alameda, and it would open the Webster Tube's westside walkway.

## **LAKE AND STREAMBED ALTERATION AGREEMENT**

The Project has the potential to impact resources including mainstems, tributaries and floodplains associated with the Lake Merritt Channel system known to occur within the identified limits of the Project. If work is proposed that will impact the bed, bank, channel or riparian habitat, including the trimming or removal of trees and riparian vegetation please be advised that the proposed Project may be subject to LSA Notification. This includes impacts to drainage systems that connect to tributaries of main stem creeks and tributaries that occur within the Project Biological Study Area (BSA). CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., for or 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, washes, watercourses with a subsurface flow, and floodplains are generally subject to notification requirements.

## **CALIFORNIA ENDANGERED SPECIES ACT**

Please be advised that a CESA ITP must be obtained if the Project has the potential to result in take of species of plants or animals listed under CESA, either during construction or over the life of the Project. Under CESA, take is defined as "to hunt,

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pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill.” Issuance of an ITP is subject to CEQA documentation. 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 Permit.

## ENVIRONMENTAL SETTING

Special-status species that have the potential to occur in or near the Project site, include, but are not limited to:

- Longfin Smelt (*Spirinchus thaleichthys*), State threatened
- Winter-Run Chinook (*Oncorhynchus tshawytscha*), State endangered
- Spring-Run Chinook (*Oncorhynchus tshawytscha*), State threatened
- Nesting birds

## COMMENTS AND RECOMMENDATIONS

CDFW acting as a Responsible Agency, has discretionary approval under CESA through issuance of a CESA Incidental Take Permit (ITP) and LSA Agreement, as well as other provisions of the Fish and Game Code that afford protection to the State’s fish and wildlife resources. CDFW would like to thank you for preparing the NOA and CDFW recommends the following updates, avoidance and minimization measures be imposed as conditions of Project approval by the lead agency, Caltrans, to ensure all Project-related impacts are mitigated to below a level of significance under CEQA:

### COMMENT 1: Fish and Wildlife Resources

**Issue:** Appendix G of the Biological Resources Section of the draft EIR provides information on potential species results yielded from various natural resource databases. However, the Biological Resources Section and Appendix G should also provide a determination of presence of a given species noted in the tables and lists of Appendix G.

**Recommendation:** CDFW recommends the lists and tables of species within the Project location included in Appendix G of the Biological Resources Section of the draft EIR provides an additional column for the determination of presence. Presence determinations can be assessed utilizing the following sources: a) wildlife databases such as the California Natural Diversity Database (CNDDDB), b) previous environmental documents from projects within the vicinity of the proposed Project, c) scientific studies or species inventories from nearby locations, d) focused survey results or findings associated with the current Project and e) focused survey results or findings from previous projects within the vicinity of the currently proposed Project.

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## **COMMENT 2: In Water Work Windows and Seasonal Avoidance**

**Issue:** The draft EIR does not include appropriate seasonal avoidance windows as a condition of approval for any proposed in-water work. Seasonal work windows are needed to avoid and minimize impacts to threatened, endangered, rare and native aquatic species, that are known to occur within the vicinity of the Project as referenced above.

**Recommendation:** All in-water work should be seasonally limited to occur between June 1 to November 30 to avoid impacts to state listed aquatic species known to occur within the Project vicinity.

## **COMMENT 3: AMM-AS-3 Protected Species**

**Issue:** Measure AMM-AS-3, Protected Species in Appendix D of the draft EIR does not include a definition of unlawful “take,” consistent with the state. In addition, the proposed measure does not specify how take will be avoided if a state or federally listed species is discovered within the BSA during pre-construction surveys or construction.

**Recommendation:** CDFW recommends the measure is updated to avoid unlawful take as defined by the state as follows: under CESA take is defined as “to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill.”

## **Recommended Mitigation Measure 1: AMM-AS-3 Protected Species**

If a state or federally listed species is discovered within the BSA during pre-construction surveys or construction, the Qualified Biologist shall immediately halt work in coordination with the resident engineer and contact the wildlife agencies for coordination on how to proceed. To avoid take, the resident engineer will suspend construction activities in coordination with the wildlife agencies.

## **COMMENT 4: Vibratory Pile Driving**

**Issue:** The Project is located within areas of high potential for presence of aquatic species such as longfin smelt, and spring and winter-run Chinook, all listed under CESA as threatened or endangered species. The description for the method of proposed vibratory pile driving installation does not provide information if pile proofing via impact pile driving is necessary to complete installation of the piles to the appropriate depth. Impact pile driving has the potential to cause take as defined by the state and may also result in significant harm or injury to aquatic species.

**Recommendation:** The method of installation for vibratory pile driving should be updated to include information on the probability of pile proofing to be conducted via impact pile driving, which has the potential to cause take of listed species. In addition to seasonal work avoidance in Comment 2 above, the current Project and all alternatives noted in the draft EIR propose the use of vibratory pile driving, which significantly avoids

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and minimizes the potential for take of aquatic state listed species by barotrauma. If the method of install has the potential to change from vibratory pile driving to impact pile driving installation methods, coordination with CDFW on how to proceed shall be necessary in order to fully satisfy the requirements of CESA for the species noted previously in this comment section. In addition to the vibratory driving analysis provided in the draft EIR, if pile proofing shall be implemented once all vibratory driving has concluded to drive piles to their final depth an analysis on the potential injurious sound levels that may be created by impact driven pile proofing should be included in the updated Biological Resources section of the draft EIR. The utilization of impact driven pile proofing may warrant the need for obtainment of an ITP as previously noted in this comment letter for the take of state listed species.

### **COMMENT 5: Fish Passage Assessment**

**Issue:** The Project does not assess potential fish passage barriers. Senate Bill 857 (SB-857), which amended Fish and Game Code 5901 and added section 156 to the Streets and Highways Code states in section 156.3, "For any project using state or federal transportation funds programmed after January 1, 2006, [Caltrans] shall insure that, if the project affects a stream crossing on a stream where anadromous fish are, or historically were, found, an assessment of potential barriers to fish passage is done prior to commencing project design. [Caltrans] shall submit the assessment to the [Department of Fish and Wildlife] and add it to the CALFISH database. If any structural barrier to passage exists, remediation of the problem shall be designed into the project by the implementing agency. New projects shall be constructed so that they do not present a barrier to fish passage. When barriers to fish passage are being addressed, plans and projects shall be developed in consultation with the [Department of Fish and Wildlife]."

**Recommendations:** CDFW recommends discussing the following location as it pertains to SB-857. Location 1, Lake Merritt Channel (I-880; PM 30.8, Alameda County), Fish Passage Assessment Database ID# 761002, fish barrier status: unassessed. The fish passage section should discuss the current status of the crossing locations noted in the California Fish Passage Assessment Database, conduct first pass and or second pass fish assessments, as necessary, as well as, provide images of the upstream and downstream ends of water conveyance structures. CDFW requests a fish passage discussion section is included to address these potentially significant impacts through the following avoidance and minimization measure, which should be made a condition of approval by the lead agency:

#### **Recommended Mitigation Measure 1: Fish Passage Assessment**

To evaluate potential impacts to native fish species and fisheries resources, Caltrans shall submit the assessment to the CDFW and add it to the CALFISH database. If any structural barrier to passage exists, remediation of the problem shall be designed into the Project by the implementing agency. New projects shall be constructed so that they

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do not present a barrier to fish passage. When barriers to fish passage are being addressed, plans and projects shall be developed in consultation with CDFW.

### **COMMENT 6: Light Impact Analysis and Discussion**

**Issue:** The Project could increase artificial lighting. Artificial lighting often results in light pollution, which has the potential to significantly and adversely affect biological resources. Unlike the natural brightness created by the monthly cycle of the moon, the permanent and continuously powered lighting fixtures create an unnatural light regime that produces a constant light output. Continuous light output for 365 days a year can have a cumulatively significant impact on fish and wildlife populations.

**Evidence the impact would be significant:** Night lighting can disrupt the circadian rhythms of many species. Many wildlife species use photoperiod cues for communication (e.g., bird song; Miller 2006), determining when to begin foraging (Stone et al. 2009), behavior thermoregulation (Beiswenger 1977), and migration (Longcore and Rich 2004).

**Recommendation:** The draft EIR should describe the type, quantity, location and specification outputs (in kelvin-scale and/or nanometers) of all proposed new and replacement lighting installations for all proposed build alternatives. A comparison analysis amongst potential alternatives as it pertains to light pollution should be included in the draft EIR. To accomplish this, the draft EIR should provide an analysis of the current lighting regime known to be present on-site as well as an analysis of the proposed changes in the lighting regime that will occur as a result of new or replacement lighting installations through the development and comparison of Isolux diagrams. The Isolux diagrams should illustrate the area and intensity over which artificial lighting will create additional light impacts over the natural landscape or aquatic habitat along the Project corridor. The draft EIR should also include a discussion in the Biological Resources section of the potentially significant impacts that could be created by increased permanent light installations or replacements or new installations to determine the extent of the impacts to rare, threatened, endangered, nocturnal and migratory bird species known to occur within the Project vicinity. CDFW recommends incorporating the following avoidance and minimization measures as conditions of approval to reduce potentially significant impacts:

### **Recommended Mitigation Measure 1: Light Impact Assessment and Avoidance**

The lead agency shall be required to submit to natural resource agencies, 30 days prior to the initiation of construction Isolux Diagrams that note current light levels present during pre-Project conditions and the predicted Project light levels that will be created upon completion of the Project. Within 60 days of Project completion the lead agency shall conduct a ground survey that compares predicated light levels with actual light levels achieved upon completion of the Project through comparison of Isolux diagrams. If an increase from the projected levels to the actual levels is discovered, additional

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avoidance, minimization or mitigation measures may be required in coordination with the natural resource agencies.

### **Recommended Mitigation Measure 2: Light Output Limits**

All LEDs or bulbs installed as a result of the Project shall be rated to emit or produce light at or under 2700 kelvin that results in the output of a warm white color spectrum.

### **Recommended Mitigation Measure 3: Vehicle Light Barriers**

Solid concrete barriers at a minimum height of 3.5 feet should be installed in areas where they have the potential to reduce illumination from overhead lights and from vehicle lights into areas outside of the roadway. Barriers should only be utilized as a light pollution minimization measure if they do not create a significant barrier to wildlife movement. Additional barrier types should be employed when feasible, such as privacy slats into the spacing of cyclone fencing to create light barriers into areas outside the roadway.

### **Recommended Mitigation Measure 4: Reflective Signs and Road Striping**

Retro-reflectivity of signs and road striping should be implemented throughout the Project to increase visibility of roads to drivers and reduce the need for electrical lighting. Reflective highway markers have also been proven effective to reduce raptor collisions on highways in California's central valley if installed along highway verges and medians.

### **Recommended Mitigation Measure 5: Light Pole Modifications and Shielding**

All light poles or sources of illumination that shall be new or replacement installations should be installed with the appropriate shielding to avoid excessive light pollution into natural landscapes or aquatic habitat with the Project corridor in coordination with the wildlife agencies. In addition, the light pole arm length and mast heights should be modified to site specific conditions to reduce excessive light spillage into natural landscapes or aquatic habitat within the Project corridor. In areas with sensitive natural landscapes or aquatic habitat the lead agency should also analyze and determine in the updated draft EIR if placing the light poles at non-standard intervals has the potential to further reduce the potential for excessive light pollution caused by decreasing the number of light output sources in sensitive areas.

## **CONCLUSION**

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California's fish and wildlife resources. 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.

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Questions regarding this letter or further coordination should be directed to Mr. Robert Stanley, Senior Environmental Scientist (Specialist), at (707) 428-2093 or [Robert.Stanley@wildlife.ca.gov](mailto:Robert.Stanley@wildlife.ca.gov); or Mr. Wesley Stokes, Senior Environmental Scientist (Supervisory) at (707) 339-6066 or [Wesley.Stokes@wildlife.ca.gov](mailto:Wesley.Stokes@wildlife.ca.gov).

cc: State Clearinghouse No. 2017092041

## REFERENCES

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