



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Marine Region  
1933 Cliff Drive, Suite 9  
Santa Barbara, CA 93109  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

April 12, 2021

**Apr 13 2021**

## STATE CLEARINGHOUSE

Peterson Vollmann  
City of Oakland  
250 Frank H. Ogawa Plaza, Suite 2114 Bureau of Planning  
Oakland, CA 94612  
[pvollmann@oaklandca.gov](mailto:pvollmann@oaklandca.gov)

Dear Mr. Vollmann:

### **Subject: Waterfront Ballpark District at Howard Terminal Draft Environmental Impact Report (SCH Number 2018112070)**

The California Department of Fish and Wildlife (Department) received a Draft Environmental Impact Report (DEIR) from the City of Oakland for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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 the Department, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

### **DEPARTMENT ROLE**

The Department 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, Section 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines Section 15386, subd. (a).) The Department, 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.*, Section 1802.) Similarly, for purposes of CEQA, the Department 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. The Department is also responsible for marine biodiversity protection under the Marine Life Protection Act in coastal marine waters of California, and ensuring fisheries are sustainably managed under the Marine Life Management Act.

The Department is also submitting comments as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). The Department may need to exercise regulatory authority as provided by the Fish and Game Code. Implementation

---

<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.

Peterson Vollmann  
City of Oakland  
April 12, 2021  
Page 2

of the Project as proposed may result in take<sup>2</sup> as defined by State law of any species protected under the California Endangered Species Act (Fish & Game Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required. Pursuant to our jurisdiction, the Department has the following comments and recommendations regarding the Project.

## PROJECT DESCRIPTION SUMMARY

**Proponent:** The Oakland Athletics Investment Group, LLC.

**Objective:** The purpose of the proposed Project is to construct a new waterfront Major League Baseball ballpark with mixed use development including residential units, retail/office space, indoor venue, hotels space, and public open space. The proposed Project would demolish all existing structures with the exception of four shipping container cranes and an existing wharf. Work within the waters of San Francisco Bay may occur at the existing wharf and existing outfalls.

**Location:** The Project site is located on the Oakland waterfront at the Charles P. Howard Terminal within the City of Oakland.

## MARINE BIOLOGICAL SIGNIFICANCE

The San Francisco Bay-Delta is the second largest estuary in the United States and supports numerous aquatic habitats and biological communities. It encompasses 479 square miles, including shallow mudflats. This ecologically significant ecosystem supports both state and federally threatened and endangered species and sustains important commercial and recreational fisheries.

State and Federally Listed and Commercially/Recreationally Important Species Protected species under the State and Federal Endangered Species Acts that could potentially be present near Project activities include:

- Chinook salmon (*Oncorhynchus tshawytscha*), state and federally threatened (Spring-run), state and federally endangered (Winter-run)
- Steelhead (*Oncorhynchus mykiss*), federally-threatened (Central California Coast and Central Valley ESUs)
- Green sturgeon (*Acipenser medirostris*), federally-threatened (southern DPS)
- Longfin smelt (*Spirinchus thaleichthys*), state-threatened
- Brown pelican (*Pelecanus occidentalis californicus*), state fully protected
- California least tern (*Sternula antillarum browni*), state and federally endangered and state fully protected
- American peregrine falcon (*Falco peregrines anatum*), state fully protected

---

<sup>2</sup> Take is defined by Fish and Game Code Section 86 as to “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.”

Peterson Vollmann  
City of Oakland  
April 12, 2021  
Page 3

Several species with important commercial and recreational fisheries value that could potentially be impacted by Project activities include:

- Dungeness crab (*Cancer magister*),
- Pacific herring (*Clupea pallasii*),
- Rockfish (*Sebastes* spp.),
- California halibut (*Paralichthys californicus*)
- Surfperches (*Embiotocidae*).

## COMMENTS AND RECOMMENDATIONS

The Department offers the comments and recommendations below to assist the City of Oakland 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.

### I. In-Water Work Windows

The Department recommends a number of in-water work windows specific to various species that inhabit San Francisco Bay. The work windows are based on Department and other partner agency input to the San Francisco Bay Long Term Management Strategy program. Although this program is more focused on dredging work, the Department applies these same work windows to a broader range of in-water work activities. The Department recommends the following in-water work windows for the Project.

- The work window for salmonids is June 1 through November 30.
- The work window for Pacific herring is March 16 through November 30.
- The work window for least terns is August 1 through February 28.

The Final Environmental Impact Report (FEIR) should discuss the proposed Project timeline in detail and highlight whether any conflicts could arise with these work windows.

### II. Impacts to Marine State Listed and Commercially/Recreationally Important Species

The Department recognizes that in-water work associated with the stormwater outfalls and wharf restoration may not be needed according to the DEIR. However, the Department noted that the DEIR states that some repair work to the wharf may be needed. If in-water work is to occur, the Department has the following concerns regarding potential impacts to state listed and commercially/recreationally important species. Depending on the proposed methods and time of the year work is conducted, there is potential for take of state listed species to occur. The Department may recommend that a 2081(b) Incidental Take Permit be issued for the Project. Additionally, in-water work could impact habitat for spawning fish in which case further

Peterson Vollmann  
City of Oakland  
April 12, 2021  
Page 4

consultation with the Department would be recommended. The Department has concerns regarding the following:

- Hydroacoustic impacts caused from impact pile driving during wharf rehabilitation and stormwater outfall construction.
- Construction outside of approved work windows.
- Potential impacts to Pacific herring spawning habitat.

### **III. Impacts to State Fully Protected Birds and Raptors**

American peregrine falcons and California least terns could be present in the general area of the Project. Although the minimization measures do address nesting impacts and monitoring, the Department has additional concerns regarding the potential impacts caused by firework detonations to these two species. The Department recommends that the 500-foot buffer of nesting birds, particularly nesting falcons and other raptors and terns, be further analyzed in the FEIR. The Project should consider adjusting this distance if monitoring indicates disturbance of the nest has occurred and/or new information becomes available suggesting detonations occur at greater distance from nesting falcons or terns.

## **ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base 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:

[http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB\\_FieldSurveyForm.pdf](http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf). The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: [http://www.dfg.ca.gov/biogeodata/cnddb/plants\\_and\\_animals.asp](http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp).

## **FILING FEES**

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of 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/Department. Payment of the 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**

The Department appreciates the opportunity to comment on the DEIR for the Waterfront Ballpark District at Howard Terminal. If you have any questions or comments, please

Peterson Vollmann  
City of Oakland  
April 12, 2021  
Page 5

contact Arn Aarreberg, Environmental Scientist, Marine Region at (707) 791-4195, [Arn.Aarreberg@wildlife.ca.gov](mailto:Arn.Aarreberg@wildlife.ca.gov) or Marcia Grefsrud, Environmental Scientist, Bay-Delta Region at (707) 644-2812, [Marcia.Grefsrud@wildlife.ca.gov](mailto:Marcia.Grefsrud@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
343995CB95354BC...

Craig Shuman, D. Env  
Marine Regional Manager

ec: Becky Ota, Program Manager  
Department of Fish and Wildlife  
([Becky.Ota@wildlife.ca.gov](mailto:Becky.Ota@wildlife.ca.gov))

Eric Wilkins, Senior Environmental Scientist  
Department of Fish and Wildlife  
([Eric.Wilkins@wildlife.ca.gov](mailto:Eric.Wilkins@wildlife.ca.gov))

Brenda Blinn, Senior Environmental Scientist  
Department of Fish and Wildlife  
([Brenda.Blinn@wildlife.ca.gov](mailto:Brenda.Blinn@wildlife.ca.gov))

Marcia Grefsrud; Environmental Scientist  
Department of Fish and Wildlife  
([Marcia.Grefsrud@wildlife.ca.gov](mailto:Marcia.Grefsrud@wildlife.ca.gov))

Arn Aarreberg, Environmental Scientist  
Department of Fish and Wildlife  
([Arn.Aarreberg@wildlife.ca.gov](mailto:Arn.Aarreberg@wildlife.ca.gov))

Reyna Amezcua  
San Francisco Bay Conservation and Development Commission  
([reyna.amezcua@bcdca.gov](mailto:reyna.amezcua@bcdca.gov))

Xavier Fernandez  
San Francisco Bay Regional Water Quality Control Board  
([xavier.fernandez@waterboards.ca.gov](mailto:xavier.fernandez@waterboards.ca.gov))

Habitat Conservation Program Branch CEQA Program Coordinator  
California Department of Fish and Wildlife  
[ceqacommentletters@wildlife.ca.gov](mailto:ceqacommentletters@wildlife.ca.gov)

State Clearinghouse (SCH No. 2018112070)  
([state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov))