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DEPARTMENT OF FISH AND WILDLIFE  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



July 3, 2020

Governor's Office of Planning & Research

**Jul 06 2020**

Mr. Jason Cashman, Environmental Manager  
Port of Stockton  
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**STATE CLEARINGHOUSE**

**Subject: Lehigh Southwest Stockton Terminal Project, Draft Environmental Impact Report, SCH No. 2019100510, City of Stockton, San Joaquin County**

Dear Mr. Cashman:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Environmental Impact Report (EIR) from Port of Stockton for the Lehigh Southwest Stockton Terminal Project (Project) pursuant to 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 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 and Game Code, §§ 711.7, subd. (a) and 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

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<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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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 Alteration (LSA) regulatory authority. (Fish and Game 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 and Game Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

## **REGULATORY REQUIREMENTS**

### *California Endangered Species Act*

Please be advised that 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 (Fish and Game Code, § 2080 et seq.), the Project must demonstrate compliance with CESA, either through full avoidance measures or obtaining take coverage through a CESA Incidental Take Permit (ITP). Issuance of a CESA ITP is subject to CEQA documentation; therefore, 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 potential significant modification to the Project and mitigation measures may be required in order to obtain a CESA ITP.

### *Lake and Streambed Alteration*

CDFW requires an LSA Notification (Notification), pursuant to Fish and Game Code section 1600 et. seq., for Project activities affecting 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, washes, watercourse with a subsurface flow, and floodplains are subject to notification requirements. CDFW will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

## **PROJECT DESCRIPTION AND LOCATION**

The Project proponent is Port of Stockton. The objective of the Project is to redevelop and construct the existing bulk cementitious material receiving and distribution terminal to accommodate additional capacity and improve operational efficiency. It includes a lease modification to increase the terminals leasehold from 5.43 acres to 7.34 acres. Primary Project activities include rehabilitation of Berth 2 to support a new ship unloader with a greater capacity and reach, replacing a section of the existing rail trestle (bridge)

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so that it could accommodate full rail cars and an engine, and upland improvements to the storage, rail, and truck loading systems to handle rail car loading. Project start and end dates are 2020-2025 in five (5) phases. Phases 1 and 2, the upland improvements and rehabilitation of Berth 2, would occur from 2020-2021. Phase 3, installation of the ship unloader would occur from 2021-2023. Phase 4, the rail loadout and the rail trestle reconstruction, would occur from 2022-2024. Phase 5, the storage dome and material handling equipment installation, would occur from 2023-2025.

The Project is located in the City of Stockton, San Joaquin County, State of California, in the northeast corner of the Port of Stockton, bounded by the San Joaquin River, at 205 Port Road 1, north of Washington Street, and Latitude 37°57'00" N, Longitude - 121.19'07" W.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist Port of Stockton 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 an EIR is appropriate for the Project.

### **Comment 1: Upland Pile Driving Impacts Discussion**

Page 48 states that pile driving in uplands will be required over approximately six (6) months to install the new storage dome's foundation system. Please discuss in the draft EIR how far the pile driving sound and vibration will extend from the upland work sites and determine if upland pile driving will disturb nesting birds, bats, and other wildlife that may be present within sound and vibration range of the work area.

### **Comment 2: Reduce Hydroacoustic Impacts to Less Than Significant Level**

CDFW recommends avoiding impacts to fish and wildlife. Minimizing impacts is necessary where impacts cannot be avoided. If impacts cannot be avoided or minimized to a level of less than significant, then compensatory mitigation is required. In addition to Mitigation Measure (MM)-BIO-1 (Obtain Coverage under the SJMSCP or Conduct Nesting Bird Surveys and Establish Western Pond Turtle Buffers), MM-BIO-2 (Obtain and Implement NPDES Construction Stormwater General Permit), MM-BIO-3 (Conduct In-water Construction During Established Window), MM-BIO-4 (Employ Soft-Start Techniques for Impact Pile Driving), and MM-BIO-5 (Compliance with Permitting Requirements for In-Water Work), described on pages 115-116 of the draft EIR, CDFW recommends adding additional minimization measures to the draft EIR to minimize hydroacoustic impacts to fish to a less-than-significant level.

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CDFW recommends using the following methods in combination or using the methods that are suitable for this Project within the constraints of the Project location to minimize impacts to a less-than-significant level:

- Use of an impact hammer cushion block;
- Use of impact hammers during daylight hours only;
- Pile driving during slack tides;
- Pipe caissons installed with a vibratory hammer to isolate the piles from the water when they are driven with an impact hammer;
- Use of a bubble curtain surrounding the pile to be driven;
- Creating a barrier between the Project area to exclude fish from accessing the pile driving activities where sound threshold levels will be exceeded (e.g., silt curtain, fine mesh nets, cofferdam);
- Hydroacoustic monitoring to ensure sound threshold levels of 206 decibels (dB) peak injury threshold level, 183 dB accumulated sound exposure level (SEL), and 150 dB root mean square pressure (effective quiet) at 10 meters are not exceeded.

If any of the sound threshold levels are exceeded in spite of actions to avoid and minimize impacts, CDFW recommends compensatory mitigation to be proposed in the draft EIR as well as monitoring reporting.

### **Comment 3: Cumulative Impacts of Larger or Heavier Ships**

4.2.2.3.1 Biological Resources Cumulative Impacts Analysis (page 223) does not address cumulative impacts of the Project regarding the impact of chartering larger or heavier ships to the Port of Stockton. The Project purpose and need on page 30 states that “The current berth capacity and channel depth is designed to handle 35,000 dead weight ton vessels” and “Because of a change in the size of vessels available in the world’s shipping fleet, Lehigh has been chartering longer and wider vessels...” Increasing the capacity and efficiency of the Project site means larger ships will utilize the dock. The need to accommodate larger ships could require changing the existing Stockton Deep Water Ship Channel depth and increase the need for maintenance dredging.

Please include an analysis and discussion of the cumulative impacts of enabling larger ships to access the Port, such as the impacts to wildlife and habitat by deepening the channel, increased maintenance dredging impacts, potential for increased water pollution, ship strikes of marine mammals in San Francisco Bay and associated shipping lanes on the California coast, impacts of introduction of additional invasive species carried in ballast water, impacts of increased shoreline erosion by sudden water displacement and replacement as the larger ships move through the Project area, and the potential need for further levee bank stabilization from increased erosion throughout

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the Project area. When impacts identified then the draft EIR should be revised to incorporate feasible and enforceable avoidance, minimization and compensatory mitigation measures before certification by the Lead Agency.

#### **Comment 4: Additional Avoidance and Minimization Measures**

The following measures are recommended for addition to the draft EIR to reduce wildlife impacts.

*“Bat Habitat Assessment and Avoidance. A Qualified Biologist shall conduct a habitat assessment for bats within and adjacent to the Project site where structures and/or trees would be disturbed for a period of more than two (2) hours. The assessment shall include a visual inspection of features within 120 feet of the Project site for potential roosting features (bats need not be present). Habitat features found during the survey shall be flagged or marked. If bats (individuals or colonies, not just roosting habitat) are detected during the habitat assessment, no work shall proceed until CDFW has been consulted.*

*If any habitat features identified in the habitat assessment will be altered or disturbed by Project activities, a Qualified Biologist shall conduct two visual surveys for bats (observation of presence of bats during foraging period) and use of ultrasonic detectors (Anabat, etc.) during dusk emergence and pre-dawn re-entry. Each survey shall be conducted within one 24-hour period and include both a dusk and pre-dawn survey period. In addition, a phased disturbance strategy shall be employed. Non-habitat trees or structural features shall be removed one (1) day prior to removal of habitat features. Permittee shall not attempt to directly disturb (e.g. shake, prod etc.) roosting features. Phased disturbance strategies shall only be permitted to occur from March 1 to April 15 (if nesting birds will not be disturbed) or September 1 to October 15. Alternative actions may be developed in consultation with CDFW.”*

*“Maternal Roost Sites. If a maternal roost site is found after June 1<sup>st</sup>, then it is to be immediately reported to CDFW and it shall be assumed that non-volant (young) bats are present in the roost area. Because the young will not be able to fly away from the disturbance, there shall be no disturbance to their roost site until the young become volant (after August 31). If a maternal roost site is found after construction activities have begun, a buffer area shall be established around the maternal roost.”*

*“Posts/Signage with Exposed Perforations. Any post with exposed perforations installed on the Project site and exposed to the environment shall have the holes permanently filled within the top six (6) inches of the post upon installation by Permittee.”*

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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 found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. 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: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## FILING FEES

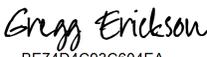
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of CEQA filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish and Game Code, § 711.4; Pub. Resources Code, § 21089).

## CONCLUSION

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

Questions regarding this letter or further coordination should be directed to Ms. Andrea Boertien, Environmental Scientist, at (209) 234-3449 or [Andrea.Boertien@wildlife.ca.gov](mailto:Andrea.Boertien@wildlife.ca.gov); or Ms. Melissa Farinha, Senior Environmental Scientist (Supervisory), at [Melissa.Farinha@wildlife.ca.gov](mailto:Melissa.Farinha@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
BE74D4C83C604EA...  
Gregg Erickson  
Regional Manager  
Bay Delta Region

cc: Office of Planning and Research, State Clearinghouse, Sacramento  
Katie Chamberlin, Anchor QEA, LLC; [kchamberlin@anchorqea.com](mailto:kchamberlin@anchorqea.com).