



State of California – Natural Resources Agency

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February 5, 2025

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Subject: State Route 37 Sears Point to Mare Island Improvement Project,  
Supplemental Environmental Impact Report, SCH No. 2020070226,  
City of Vallejo, Counties of Napa Solano and Sonoma

The California Department of Fish and Wildlife (CDFW) has reviewed the Draft Supplemental Environmental Impact Report (SEIR) from the California Department of Transportation (Caltrans) for the State Route 37 Sears Point to Mare Island Improvement Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines<sup>1</sup>, which supplements the previously certified 2023 Final Environmental Impact Report/Environmental Assessment (2023 Final EIR/EA) with Finding of No Significant Impact (three volumes) (State Clearinghouse Number 2020070226). The previous EIR/EA is referred to throughout this document as 2023 Final EIR/EA. CDFW is sharing comments on the draft SEIR to ensure Caltrans is aware of our concerns about potential impacts to sensitive resources related to the proposed project.

## 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

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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.

Skylar Huyen Nguyen  
California Department of Transportation  
February 5, 2025  
Page 2

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.

## **SUPPLEMENTAL PROJECT LOCATION AND DESCRIPTION SUMMARY**

Caltrans, as the Lead Agency proposes to incorporate additional highway improvements and the enhancement of degraded marsh habitat at Strip Marsh East (SME) into Alternative 3B. No changes are proposed for any other previously considered Alternatives; therefore, their evaluation in the 2023 Final EIR/EA remains valid, and they are not evaluated any further in this draft SEIR.

Project phasing is anticipated to be constructed in three overall phases along the corridor, depending on funding. The first phase will include the State Route (SR) 37/SR 121 intersection area, the Tolay Creek Bridge replacement, and the addition of the eastbound through lane and the eastbound transition lane from west of the SR 37/SR 121 intersection to east of the Tolay Creek Bridge replacement. The second phase will include the eastbound lane addition from east of the Tolay Creek Bridge replacement to the eastern Project limits in the vicinity of the Walnut Avenue overhead and construction of the SME enhancements. This second phase will also include installation of a tolling facility and maintenance area just east of the Tubbs Island trailhead and parking area. The third phase will involve widening and installing the additional lane in the westbound direction.

Maintenance Vehicle Pullouts (MVPs) have been added to the Project to provide areas outside of the highway shoulders where Caltrans maintenance vehicles and personnel can safely park vehicles near the roadside cabinets that will house communication, power supply, and monitoring equipment. California Highway Patrol (CHP) enforcement areas were generally described in the 2023 Final EIR/EA. Under the current design, these enforcement areas will also be incorporated into the median of the highway just east of the Tubbs Island Trailhead. The CHP median enforcement area will be at the tolling gantry. It will consist of a slightly widened area of the median to accommodate CHP vehicles between concrete barriers, allowing officers to observe and enforce traffic, tolling, and High-Occupancy Vehicle (HOV) lane violations.

To maintain overall traffic safety and operational efficiency along SR 37, active transportation and demand management (ATDM) and transportation system management and operations (TSMO) would be implemented as part of the Project to dynamically manage recurrent and nonrecurrent congestion, improve safety, and facilitate mode shift. ATDM and TSMO equipment includes closed-circuit television cameras and radar detection devices mounted on poles.

Skylar Huyen Nguyen  
California Department of Transportation  
February 5, 2025  
Page 3

Four Changeable Message Signs (CMSs) would be added to the Project within the Project limits to provide real-time traffic safety and guidance information about planned and unplanned events that impact traffic conditions on SR 37. These overhead electronic CMS signs would be mounted in the median or roadside on steel poles that cantilever the signs over the road; the poles would be supported by concrete foundations placed outside the road shoulder. Vegetation around the CMS locations would be cleared during construction and mowed to maintain access throughout the life of the Project operations. Four CMS locations have been strategically chosen to help manage traffic movement and congestion along this corridor: two in the westbound direction and two in the eastbound direction, near both ends of the corridor Project work limit.

Toll gantries were identified in the 2023 Final EIR/EA at two locations near the SR 121 interchange and near the Walnut Avenue overhead. The new lanes will still be tolled as described in the 2023 Final EIR/EA, but now the tolling gantries will be co-located about 400 feet east of the Tubbs Island Trailhead Road intersection. The gantries will be used for mounting the open-road tolling equipment and traffic monitoring equipment (tolls will be electronically collected, similar to the electronic tolling locations on other Bay Area toll bridges, as described in the 2023 Final EIR/EA). At the same location as the relocated toll gantries east of the Tubbs Island Trailhead Road intersection, an equipment building will be constructed to house the tolling equipment. A paved vehicle pullout area accessible from the eastbound shoulder will be installed at this building location to provide protected off-highway parking for workers and maintenance vehicles that need periodic access to the tolling equipment.

The 2023 Final EIR/EA indicated that lighting would be added along the corridor in advance of the tolling gantries, along highway curves, at CHP enforcement areas, and at local intersections to improve safety. The Project design has been updated to also include locations of overhead roadway lighting, with support posts in the median, designed to illuminate four lanes of traffic at the curves and approaches east and west of the Sonoma Creek Bridge, at the Noble Road intersection, east and west of the Tolay Creek Bridge replacement.

Electronic and power service equipment will be housed in roadside service cabinets, protected by guard rails. Fiber-optic lines will be installed in or adjacent to the highway shoulders to provide communication service in the corridor. Existing wood pole power lines, which generally parallel the highway on the northern side, will be relocated where necessary to accommodate the widened highway. Trash capture measures would be included where there are identified areas of trash generation or accumulation. Construction of the Project will require grading of slopes and placement of fill. Where material is excavated a balanced project design is preferred, where excavated material is reused within the corridor as fill. The reuse of excavated material will depend on testing for geotechnical competency as use for fill and may also depend on the results

Skylar Huyen Nguyen  
California Department of Transportation  
February 5, 2025  
Page 4

of testing for any potential contamination. Excavated material that is unsuitable for reuse will be removed off-site and properly used or disposed in a landfill.

The 2023 Final EIR/EA indicated that the proposed Project (Alternative 3B) would result in partial property sliver acquisitions and temporary construction easements (TCEs) along the corridor. To help minimize right-of-way and widening, one lane in each direction has been reduced from 12 feet wide to 11 feet wide. As a result, all lanes will be 11 feet wide, except at Tolay Creek Bridge. For the highway corridor, final right-of-way needs will be determined during final design. Minor additional changes in highway corridor right-of-way needs, construction staging and construction access requirements, and utility relocations and connections will be refined during final design. The SME element of the Project is outside of the existing Caltrans right-of-way and will require temporary use or access to the refuge lands at SME for grading, import or export of fill, hydrological and drainage changes, and other temporary construction activities and use. These temporary and relatively short-term activities are necessary to achieve the beneficial restoration goals at SME. Once the marsh restoration activities are completed at SME, the affected area will provide enhanced ecological benefits.

The Project includes a substantial new minimization measure, titled AMM-BIO-41, to fully address permanent impacts and loss of protected habitat associated with the Project's identified Preferred Alternative. AMM-BIO-41 would enhance approximately 600 acres of degraded habitat and create approximately 230 acres of new emergent salt marsh habitat, 80 acres of tidal channel habitat, and 290 acres of tidal flats from existing seasonal lagoons that would benefit protected species and resources at SME unit of the U.S. Fish and Wildlife Service (USFWS) managed San Pablo Bay National Wildlife Refuge (Refuge). This measure replaces most of the compensatory mitigation measures proposed in the Environmental Impact Report (EIR) for potential loss of special-status species habitat and permanent fill impacts in jurisdictional waters of the U.S. and state that would be realized by the Project. However, compensation for California red-legged frog habitat effects would be retained. A detailed overview of SME is presented here because SME enhancement is primarily or entirely outside of the highway right-of-way and substantially expands the Project Area, presents new impacts (both beneficial and temporary adverse), and replaces existing measures in the EIR.

### **Lake and Streambed Alteration Agreement**

The Project has the potential to impact stream resources including mainstems, tributaries, drainages and floodplains associated with varied aquatic resource types within the additional Biological Study Area (BSA). 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. CDFW requires an LSA notification, pursuant to Fish and Game Code § 1600 et. seq., for any activity that may substantially divert or obstruct the natural flow;

Skylar Huyen Nguyen  
California Department of Transportation  
February 5, 2025  
Page 5

change or use material from the bed, bank or channel 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.

### **Fish and Game Code § 5901**

Except as otherwise provided in this code, it is unlawful to construct or maintain in any stream in Districts 1, 1<sup>3/8</sup>, 1<sup>1/2</sup>, 1<sup>7/8</sup>, 2, 2<sup>1/4</sup>, 2<sup>1/2</sup>, 2<sup>3/4</sup>, 3, 3<sup>1/2</sup>, 4, 4<sup>1/8</sup>, 4<sup>1/2</sup>, 4<sup>3/4</sup>, 11, 12, 13, 23, and 25, any device or contrivance that prevents, impedes, or tends to prevent or impede, the passing of fish up and down stream. Fish are defined as wild fish, mollusk, crustacean, invertebrate, amphibian, or part, spawn, or ovum of any of those animals (Fish and Game Code § 45).

### **California Endangered Species Act**

Please be advised that a CESA Permit 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 permit 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 permit. CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (CEQA Guidelines §§ 21001 subd. (c), 21083, 15380, 15064 and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency’s FOC does not eliminate the Project proponent’s obligation to comply with Fish and Game Code, § 2080. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

### **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 for collecting these species for necessary scientific research and relocation of a fully protected bird species for the protection of livestock. Take of any fully protected species is prohibited, and CDFW cannot authorize their take in association with a general project except under the provisions of a Natural Communities Conservation Plan (NCCP), 2081.7 or a Memorandum of Understanding (MOU) for scientific research purposes. “Scientific Research” does not include an action taken as part of specified mitigation for a project, as defined in Section 21065 of the Public Resources Code.

Skylar Huyen Nguyen  
California Department of Transportation  
February 5, 2025  
Page 6

## COMMENTS AND RECOMMENDATIONS

CDFW would like to thank Caltrans for preparing the draft SEIR. 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 reduced below a level of significance under CEQA.

### **COMMENT 1: Potential Impacts to CDFW's Napa-Sonoma Marshes Wildlife Area and USFWS's Cullinan Ranch Restoration Efforts**

**Issue:** The SME advanced mitigation enhancement plans to change the current function of the Pond 1/1A intake by dredging the channel, excavate the channel fringe marsh, and lower channel berms to divert intake water into the SME footprint. In Section 2.3.9.12, Element 1 identifies "*the Pond 1/1A intake channel is the primary tidal connection to the interior of SME*" and Element 2 describes lowering the channel berms, however the SEIR does not identify the current function of the Pond 1/1A intake, nor does it evaluate the potential impacts the diversion will have as a result.

The Pond 1 intake channel is tidally driven, conveying water under SR 37 directly into CDFW's Napa River Salt Marsh Restoration (Ponds 1, 1A and 2 within the Napa-Sonoma Marshes Wildlife Area) as well as indirectly into USFWS's connected Cullinan Ranch Restoration. Both restorations are 10 or more years post-construction with specific success criteria goals that are dependent on the intake of water from San Pablo Bay. Altering the Pond 1/1A intake may result in decreased or increased flows that can negatively impact CDFW's and/or USFWS's infrastructure or increase state/federal operation and management funds and resources. The SME enhancement goal #5 (Section 2.3.9.7) should include meeting adjacent landowner/land manager requirements to ensure the success of these competed restoration projects. In addition, sufficient modeling should be conducted, dispersed, and discussed with interested parties prior to finalizing design.

### **COMMENT 2: Vertical Vegetated Structure for Refugia**

**Issue:** The SEIR states the SME advanced mitigation enhancement activities anticipate providing upland transition zones and uplands areas post construction. However, vegetated upland refugia needs to be established in key areas prior to and during construction for marsh-dependent special-status fish and wildlife species known to be present. Establishing usable, vertical structure to key areas in the enhancement area prior to construction is critical to the survival of source populations its goal is to support. In particular, the SME supports salt marsh harvest mouse (*Reithrodontomys raviventris*, SMHM) (*Reithrodontomys raviventris*), a State Fully Protected species and State and Federal Endangered species. As Lead Agency, Caltrans must adopt the appropriate avoidance and minimization measures as conditions of approval to avoid take of a fully

Skylar Huyen Nguyen  
California Department of Transportation  
February 5, 2025  
Page 7

protected species in the draft EIR. Coordination and consultation with special-status species working groups (e.g. SMHM Working Group and Secretive Marsh Bird Working Group) are recommended to collaborate with species specialists to ensure special-status species are protected through the entire enhancement process.

Depending on the appropriate elevation, revegetation could be expedited by utilizing excavated plant material, such as the perennial pickleweed (*Salicornia bigelovii*) "mats" from the channel fringe marsh reused in refugia areas. This allows the enhancement to utilize the native seed bank on-site, decrease colonization of invasive plant species, and accelerate establishment and use of sufficient cover for refugia.

### **COMMENT 3: Vertical Infrastructure Impacts**

**Issue:** Additional infrastructure planned in the SEIR (e.g. utility buildings, cabinets, lighting, signing, toll gantries, etc.) alter the natural elevation of the marsh topography and incidentally offer artificial avian predators hunting perches throughout the landscape. As a result, many sensitive species in the marsh will be more vulnerable and at a disadvantage to evade the perched predator. Considering the sensitive habitat the SEIR transects and the species on which it depends, all infrastructure should consider installing environmentally friendly deterrents to prevent predators from utilizing equipment as perching posts for hunting.

### **COMMENT 4: White-Tailed Kite Protective Measures**

**Issue:** While there are limited nesting opportunities for white-tailed kite (*Elanus leucurus*) in the SEIR BSA, there is high potential for white-tailed kite winter communal roosts in the wetlands surrounding the BSA. Winter communal roosts are used as night roosts as well as providing the opportunity for pairs to bond. Winter roost of 50 and 100 birds have been observed in Napa-Sonoma Marshes Wildlife Area (NSMWA) with one discovered within a 2-mile radius of the BSA as recently as January 2025 (pers. Taylor).

Before settling for the night, white-tailed kite circle the roost before settling in, usually well after sunset. Any disturbance at this time could result in the entire group of birds moving to another site which will increase their risk of survival. Therefore, it is critical that any disturbance beyond the BSA's ambient visual (such as temporary and permanent lighting) and sound should have additional avoidance and minimization measures from sunset into twilight to protect potential white-tailed kite wintering roosts.

### **COMMENT 5: Longfin smelt and white sturgeon protective measures.**

**Issue:** The Project has the potential to result in potentially significant impacts to fish and wildlife resources that support longfin smelt (*Spirinchus thaleichthys*), a State Threatened species, and white sturgeon (*Acipenser transmontanus*), a State Candidate-Threatened species.

Skylar Huyen Nguyen  
California Department of Transportation  
February 5, 2025  
Page 8

In January 2025, USFWS formally proposed the designation of critical habitat for the San Francisco Bay-Delta longfin smelt, which consists of portions of San Pablo Bay and adjacent waterways to the east in Sonoma, Napa, Solano, Contra Costa, and Sacramento Counties. Much of the Project's BSA is directly connected to this proposed critical habitat.

The San Francisco Estuary (SFE) which includes (but not limited to) San Pablo Bay, Petaluma River, Sonoma Creek, Napa River and Carquinez Strait are known to support white sturgeon and frequent the sloughs of CDFW's NSMWA. The SFE population of white sturgeon is the only reproducing population in California and are most white sturgeon juveniles and adults are believed to remain in the SFE year-round (CDFW 2024).

While the SME enhancement may benefit both CESA-protected species, the construction activities creating the habitat may result in the "take" one or both species. CDFW recommends obtaining an Incidental Take Permit (ITP) to cover Project activities that may incidentally take either species.

#### **COMMENT 6: Impacting the Hunting and Fishing Community**

**Issue:** CDFW's NSMWA and USFWS's San Pablo Bay National Wildlife Refuge both provide hunting opportunities on public lands. Access points are throughout the SR 37 corridor, which will be impacted during construction as well as the SME temporarily impacting marginal hunting opportunities. Peak use during waterfowl season is approximately end of September to mid-February (includes early, regular, and late seasons for Balance of the State Zone). Fishing opportunities are year-round with popular fishing spots along SR 37. Additional provisions should be considered for key use areas to decrease temporary impacts to hunting and fishing access.

#### **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.

Questions regarding this letter or further coordination should be directed to Karen Taylor, Senior Environmental Scientist (Specialist), at (707) 287-2144 or [Karen.Taylor@wildlife.ca.gov](mailto:Karen.Taylor@wildlife.ca.gov); or Jason Faridi, Senior Environmental Scientist (Supervisory), at (707) 810-0764 or [Jason.Faridi@wildlife.ca.gov](mailto:Jason.Faridi@wildlife.ca.gov) .



Skylar Huyen Nguyen  
California Department of Transportation  
February 5, 2025  
Page 9

Sincerely,

DocuSigned by:  
  
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Erin Chappell  
Regional Manager  
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2020070226)

## REFERENCES

CDFW. Napa River Salt Marsh Restoration Project Final EIR. June 2004.

CDFW. Petition to List White Sturgeon (*Acipenser transmontanus*) as Threatened under the California Endangered Species Act. June 2024.

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