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GAVIN NEWSOM, Governor
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February 24, 2022

Jason Cashman, Environmental Manager
 Port of Stockton
 2201 West Washington Street
 Stockton, CA 95203
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Subject: T.C. NO. CAL. Warehousing and Distribution Facility Project, Draft Environmental Impact Report, SCH No. 2021080499, City of Stockton, San Joaquin County

Dear Mr. Cashman:

The California Department of Fish and Wildlife (CDFW) reviewed the draft Environmental Impact Report (EIR) from the Port of Stockton for the T.C. NO. CAL. Warehousing and Distribution Facility Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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 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 &

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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G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: Port of Stockton

Objective: The objective of the Project is to construct and operate a distribution warehouse on a portion of the Project site and remediate existing contaminated soils throughout the Project site. Primary Project activities include soil remediation of areas throughout the 102-acre Project site called Site 47. The construction and operation of a distribution warehouse will occur on 60 acres within the 102-acre Project site. Construction elements include a 655,200-square-foot warehouse, 293,951-square-foot outdoor storage area, employee parking, trailer parking, trailer storage, truck docks, rail service and spurs, detention ponds, water tank and pumphouse, guard house, and minor ancillary structures on the existing vacant area.

Three stormwater drainage ditches are located on the Project site. Drainage Ditch 1, “central ditch,” is an open, channelized, earthen stormwater drainage ditch approximately 0.80-acre and 2,139 feet long. Drainage Ditch 2, “western ditch,” is an open, channelized, earthen stormwater drainage ditch approximately 0.17-acre and 529 feet long. The southern end of the western ditch has a culvert and concrete catch basin where water flows into the Project site from the Port’s larger storm drain system. Drainage Ditch 3, “southern ditch,” connects to the western ditch with no obstructions or culverts. It is vegetated and approximately 0.61-acre and 1,732 feet long. The ditches convey stormwater and surface groundwater to a single pump-controlled discharge point on the west side of the West Complex. Stormwater is held in a retention basin until it is pumped into the San Joaquin River. The central ditch will be filled, the western ditch will be modified to accommodate the distribution facility and infrastructure, and a new drainage channel will be constructed along the northern boundary of Site 47 (south of McCloy Avenue) to be integrated into the Port’s drainage system.

Site preparation will generally include clearing and grubbing of vegetation, removing existing utilities, removing contaminated soil, installation of building support columns, moving contaminated soil away from existing paved areas, building foundations to facilitate placement of a two-foot clean soil cover in unpaved areas, covering contaminated soil with clean soil sourced from the Port, compacting the clean fill, treating it with lime and cement, overlaying it with an aggregate base, and covering it with a concrete slab.

Trees to be removed by Project activities will be replaced by 30 trees in undisturbed areas of the Project site.

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Location: The Project is located in the City of Stockton, San Joaquin County. It is located on the Port of Stockton's West Complex. Rough and Ready Island is bordered to the north, south, and east by the San Joaquin River and to the west and south by the Burns Cutoff (a tributary to the San Joaquin River). The Project site is south of McCloy Avenue and the nearest cross-street is the Port of Stockton Expressway, located at latitude 37°56'47.192" N and longitude -121°21'8.773" W (see Exhibit 1, Project Site and Vicinity).

The Project has four distinct areas proposed for remediation and/or development (see Exhibit 2, Development and Remediation Areas).

- Warehouse Development Area – a 60-acre area proposed for remediation and warehouse development. It is bordered to the north by McCloy Avenue and Port railways; to the west by the Port of Stockton Expressway; to the south by the Ferguson Building warehouse parking lot at 530 Port of Stockton Expressway, stormwater drainage ditches, and undeveloped Port land; and to the east by the DR commercial facility and abandoned structures.
- Western Remediation Area – a 7-acre area to the west of the Warehouse Development Area that will be remediated and remain undeveloped.
- Eastern Remediation Area – a 9-acre area to the east of the Warehouse Development Area that will be remediated and remain undeveloped.
- Western Warehouse Area – a 26-acre area to the west of the Western Remediation Area that will be remediated and undergo pavement controls.

Timeframe: The Project construction and remediation is anticipated to occur between 2022 and 2024. Phase 1 includes site preparation and remediation within the Warehouse Development Area (8 months). Phase 2 includes construction of warehouse and improvements in the Warehouse Development Area (20 months duration with a potential one-month overlap with Phase 1). The third phase includes remediation of the Western and Eastern Remediation Areas and Western Warehouse Area (two months in 2024).

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.

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Comment 1: Notification of Streambed Alteration Agreement Recommended

On page 84, in Section 3.3.1.2 Wetlands and Jurisdictional Waters, the draft EIR states the following: “The stormwater ditches...do not meet the definition of a wetland under the State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State that was adopted by the State Resources Water Quality Control Board as the ditches are artificial (not a wetland created by modification of surface waters of the state) and are subject to ongoing operation and maintenance... Per the Procedures, the stormwater ditches are not waters of the state because they are artificial wetlands that were constructed and are...maintained for settling if sediment; detention, retention, infiltration, or treatment of stormwater runoff...; and treatment of surface waters.” Please be advised that elements of the proposed Project may be subject to Lake and Streambed Alteration (LSA) Notification. This includes impacts to drainage systems that connect to tributaries of main stem creeks and tributaries that occur within the Project site. CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., for any activity that may substantially divert or obstruct the natural flow; 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. CDFW recommends that the Project submit an LSA notification so that CDFW may determine whether project elements are subject CDFW’s LSA regulatory authority.

Comment 2: Wetland Mitigation

On page 95, Mitigation Measure BIO-4: Compensatory Wetland and Waters Mitigation, the draft EIR says that if areas on the Project site are determined to be subject to the Central Valley Regional Water Quality Control Board jurisdiction as waters of the state, then TC NO. CAL. Development will purchase appropriate wetland mitigation credits at a ratio of 1:1 to compensate the loss of state waters from the National Fish and Wildlife Foundation in-lieu fee program. If the impacted ditches are determined to have wildlife habitat per the LSA Agreement process discussed in Comment 1, and if mitigation is deemed necessary during the permitting process, CDFW cannot accept in-lieu fees as compensatory mitigation.

CDFW recommends that the draft EIR be revised to include an alternate compensatory mitigation strategy, such as 1) creating mitigation on-site to protect it in perpetuity, and funding the protection in perpetuity; or 2) putting a conservation easement on land with wetland habitat of equal or greater conservation value, with written acceptance from CDFW, including a management plan, and providing an endowment to manage the easement in perpetuity. CDFW has recommended previously that the Port of Stockton develop on-site or local compensatory mitigation options for development projects that require habitat/species mitigation which is not covered through the San Joaquin County Multi-Species Habitat Conservation Plan (SJMSCP) process. There are currently no CDFW-approved mitigation banks for wetlands that include the Project site within the

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banks' service area. Accordingly, CDFW recommends that the draft EIR be revised to include development of a robust mitigation plan that will reduce the impacts of the Project to a level less-than-significant and provide benefits to local or on-site resources and species.

Comment 3: Swainson's Hawk Surveys

On page 97 of the draft EIR, Mitigation Measure BIO-1: Obtain Coverage under the SJMSCP or Implement Protective Measures for Nesting Birds, Western Pond Turtle, Giant Garter Snake, and Valley Elderberry Longhorn Beetle, it states that the Project will obtain coverage under the SJMSCP. If the Project cannot obtain coverage under the SJMSCP, specific avoidance and minimization measures will be implemented to avoid impacts to special-status species.

CDFW recommends adding the following avoidance and minimization measure to the draft EIR for avoidance of impacts to Swainson's hawk:

"CDFW recommends conducting Project activities outside of the Swainson's hawk breeding season (March 20 to September 15). If Project activities are to be conducted during breeding season, surveys for Swainson's hawks and their nests shall be conducted by a Qualified Biologist prior to the beginning of Project-related activities at each phase of the Project site. Surveys shall be conducted in a manner consistent with the *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>). Surveys shall cover a minimum of two survey periods with the minimum number of surveys prior to Project initiation as follows:

- January to March 20 – survey all day for raptor nests a minimum of one survey.
- March 20 to April 5 – survey from either sunrise to 1000 or 1600 to sunset with a minimum of three surveys.
- April 5 to April 20 – survey from either sunrise to 1200 or 1630 to sunset with a minimum of three surveys."

Comment 4: Giant Garter Snake Avoidance and Incidental Take Recommendation

On page 93, the draft EIR states that alternatives to SJMSCP coverage will limit construction activities between May 1 to September 30 (giant garter snake's active period, when snakes are able to move to avoid disturbance), that a survey will be conducted 24 hours prior to construction activities necessary in giant garter snake habitat between October 1 and April 30, that biologists will have stop work authority, giant garter snakes will be allowed to move away from the construction area on their own, and if giant garter snakes are observed in burrows, then burrows will be flagged, a 200-foot buffer will

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be established until snakes are no longer present, and the project area will be inspected by the biologist when a lapse in construction activity of 2 weeks or more has occurred.

If the Project does not participate in the SJMCSP, CDFW recommends avoiding work in potential giant garter snake habitat between October 1 and April 30 because it is likely that, if giant garter snakes are in the Project area, they will be estivating in upland burrows and unable to move away from Project construction. This could result in a greater impact to giant garter snake. Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in take of species of plants or animals listed or a candidate under CESA, either during construction or over the life of the Project. Under CESA, take is defined as “to hunt, 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 with CDFW is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit. If project work must occur during the inactive period of giant garter snake without SJMSCP coverage, then CDFW recommends obtaining an ITP to avoid possible significant delays in construction.

Comment 5: Valley Elderberry Longhorn Beetle Consultation

On page 93, the draft EIR says an alternative to SJMSCP participation coverage will include surveying for elderberry shrubs and if elderberry shrubs identified on the Project site cannot be avoided, then TC NO. CAL. Development will coordinate a removal and replanting effort with CDFW. The Valley elderberry longhorn beetle is listed as threatened under the Endangered Species Act, but is not listed as a threatened or endangered species under CESA. CDFW recommends that coordination for a removal and replanting effort is pursued with the United States Fish and Wildlife Service.

Comment 6: Tree Replanting Guidance

On page 93-94, the draft EIR states that TC NO. CAL. Development will plant a minimum of 30 trees, including Patmore ash (*Fraxinus p. 'Patmore'*), Chinese pistache (*Pistachia chinensis*), redwood (*Sequoia sempervirens*), and multi-trunk chaste tree (*Vitex agnus-castus*). CDFW recommends the draft EIR be amended to specify that only native species of trees, adapted to the lighting, soil and hydrological conditions at the replanting site, will be used. For each tree slated for removal that is four inches diameter at breast height or larger, the following minimum mitigation ratio should be used:

- Oaks 4” to 12” DBH – 3:1 (replacement trees to each tree removed)
- Oaks 13” to 24” DBH – 5:1
- Other native trees – 3:1

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- Non-native trees – 1:1

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: 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. 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.

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. 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

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 Andrea Boertien, Environmental Scientist, at (707) 317-0388 or Andrea.Boertien@wildlife.ca.gov; or Michelle Battaglia, Senior Environmental Scientist (Supervisory), at Michelle.Battaglia@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell
Regional Manager
Bay Delta Region

cc: Office of Planning and Research, State Clearinghouse, Sacramento
Katie Chamberlin, Anchor QEA; kchamberlin@anchoragea.com

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Exhibits

Exhibit 1: Project Site and Vicinity Map



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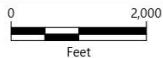
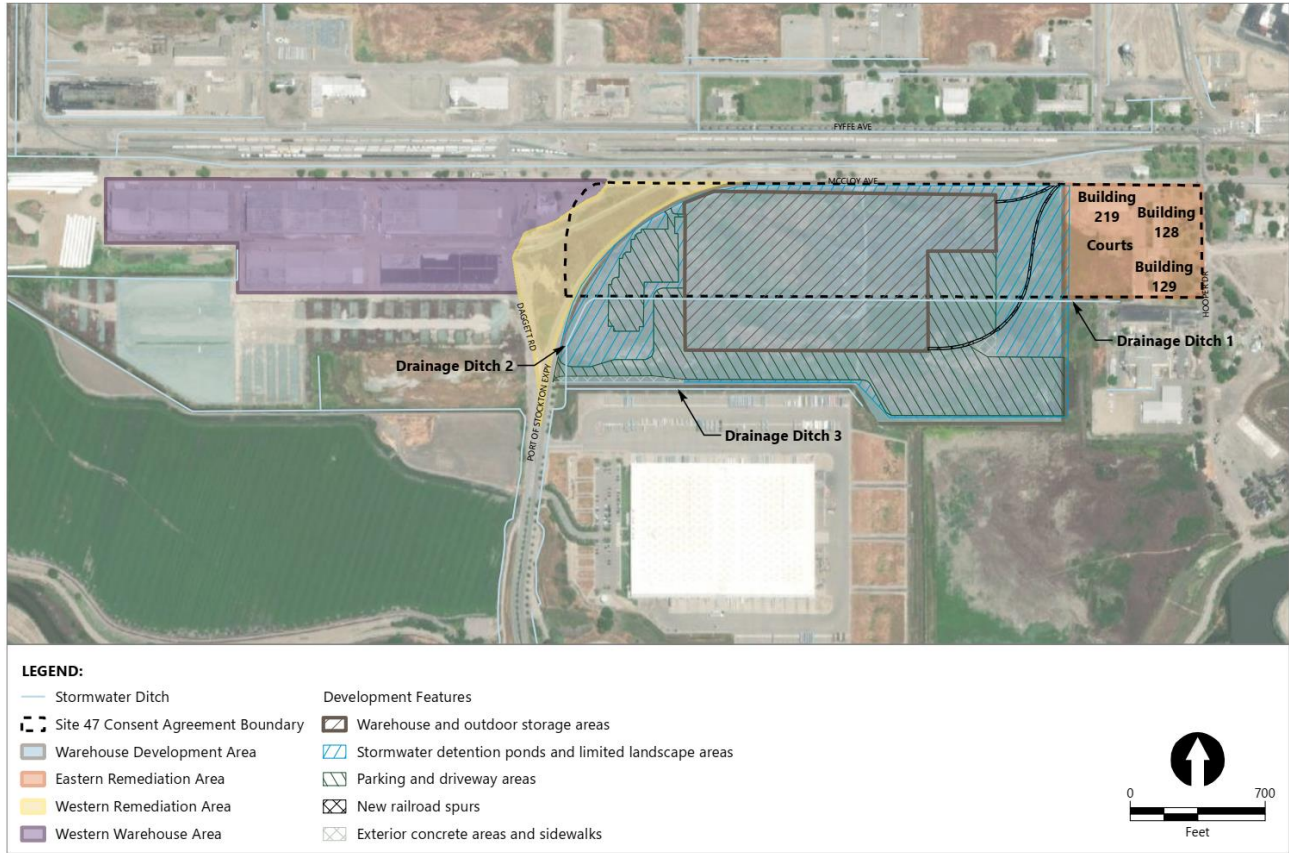


Figure ES-1
Project Site and Vicinity
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Exhibit 2: Development and Remediation Area



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Figure 2
Development and Remediation Areas
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