



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

Bay Delta Region

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November 26, 2024

Jason Cashman, Director of Environmental Affairs

Port of Stockton

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Stockton, CA 95203

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Subject: Nevada Cement Company LLC Stockton Terminal Modernization Project,
Notice of Preparation (NOP); SCH No. 2024100490; San Joaquin County

Dear Mr. Cashman:

The California Department of Fish and Wildlife (CDFW) reviewed the Notice of Preparation (NOP) of a draft Environmental Impact Report (EIR) from Port of Stockton provided for the Nevada Cement Company LLC Stockton Terminal Modernization Project (Project) located in San Joaquin County.

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.) 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 over the Project pursuant to the Fish and Game Code. For example, the Project may be subject to CDFW's Lake and Streambed Alteration (LSA) regulatory authority, if the Project impacts the bed, channel or bank of any river, stream or lake within the State (Fish & G. Code, § 1600 et seq.). Likewise, to the extent the Project 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.

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REGULATORY REQUIREMENTS

California Endangered Species Act

A CESA Incidental Take Permit (ITP) must be obtained from CDFW 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. Under CESA, “take” means “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.” (Fish & G. Code, § 86.) CDFW’s issuance of an ITP is subject to CEQA and to facilitate permit issuance, any project modifications and mitigation measures must be incorporated into the CEQA document analysis, discussion, and 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. Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064 & 15065.) In addition, pursuant to CEQA, the Lead Agency cannot approve a project unless all impacts to the environment are avoided or mitigated to less-than-significant levels, or the Lead Agency makes and supports findings of overriding consideration for impacts that remain significant despite the implementation of all feasible mitigation. Findings of consideration under CEQA, however, do not eliminate the Project proponent’s obligation to comply with the Fish and Game Code.

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for Project activities affecting river, 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, drainage ditches, washes, watercourses with a subsurface flow, and floodplains is generally subject to notification requirements. In addition, infrastructure installed beneath such aquatic features, such as through horizontal directional drilling, is also generally subject to notification requirements. Therefore, any impact to the mainstems, tributaries, or floodplains or associated riparian habitat caused by the proposed Project will likely require an LSA Notification. CDFW may not execute a final LSA Agreement until it has considered the final EIR and complied with its responsibilities as a responsible agency under CEQA.

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Migratory Birds and Raptors

CDFW has authority over actions that may result in the disturbance or destruction of active bird nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include section 3503 (regarding unlawful take, possession, or needless destruction of the nests or eggs of any bird), section 3503.5 (regarding the take, possession, or destruction of any birds-of-prey or their nests or eggs), and section 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

PROJECT DESCRIPTION AND LOCATION SUMMARY

Project Location: The Port is located south of the San Joaquin River and is an industrial port served by rail, trucks, and vessels. The existing Nevada Cement terminal is located in the northeast corner of the Port's East Complex. The terminal gate is located at 205 Port Road 1. The 4.92-acre terminal is generally bound by the San Joaquin River, Harbor Street/Port Road A, Port Road 1, and Port Road 2. The surrounding area is characterized by industrial uses including the presence of storage tanks, maritime terminals, cementitious materials storage structures, grain silos, railroad facilities, large storage buildings, and stockpiles of various commodities.

This Project consists of construction and operation of a new, larger ship unloader, rehabilitation of Berth 3/4 (requiring 130-150 new piles, new concrete support beams, and new gantry rails), rail improvements south of and adjacent to Berth 3/4, replacement of two existing storage bunkers via dome construction, renovation of the truck and rail loading station, construction of piping interconnections to existing pipelines, and barge loading equipment installation at Berth 2.

The CEQA Guidelines (§§15124 & 15378) require that the draft EIR incorporate a full Project description, including reasonably foreseeable future phases of the Project, and that contains sufficient information to evaluate and review the Project's environmental impact. The Project description should include appropriate detailed exhibits disclosing the Project area including temporary and permanently impacted areas such as the equipment staging area, adjacent infrastructure development, staging areas, and access and haul roads.

Please include a complete description of the following project components in the Project description, as applicable:

- Footprints of proposed permanent Project features and temporarily impacted areas, such as staging areas and access routes;
- Area and plans for any proposed buildings/structures, ground-disturbing activities, fencing, paving, and stationary machinery;

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- Operational features of the Project, including level of anticipated human presence (describe seasonal or daily peaks in activity, if relevant), artificial lighting/light reflection, noise, traffic generation (both marine, vehicle, and rail), and other features; and
- Construction schedule, activities, equipment, and crew sizes.

As required by §15126.6 of the CEQA Guidelines, the EIR should include an appropriate range of reasonable and feasible alternatives that would attain most of the basic Project objectives and avoid or minimize significant impacts to the environment.

ENVIRONMENTAL SETTING

Sufficient information regarding the environmental setting is necessary to understand any potentially significant impacts on the environment of the proposed Project and any alternatives identified in the draft EIR (CEQA Guidelines, §§15125 & 15360). CDFW recommends the draft EIR provide baseline habitat assessments for special-status plant, fish and wildlife species located and potentially located within the Project area and surrounding lands, including all rare, threatened, and endangered species (CEQA Guidelines, §15380). The draft EIR should describe aquatic habitats, such as wetlands or waters of the U.S. or State, and any sensitive natural communities or riparian habitat occurring on or adjacent to the Project site (for sensitive natural communities see: <https://wildlife.ca.gov/Data/VegCAMP/NaturalCommunities#sensitive%20natural%20communities>), and any stream or wetland set back distances the City or County may require. Fully protected, threatened or endangered, candidate, and other special-status species or sensitive natural communities that are known to occur, or have the potential to occur in or near the Project site, include, but are not limited to:

Common Name	Scientific Name	Status
Cooper’s hawk	<i>Accipiter cooperii</i>	CDFW Watchlist
Swainson’s hawk	<i>Buteo swainsoni</i>	CESA listed as threatened
White-tailed kite	<i>Elanus leucurus</i>	California Fully Protected Species
Loggerhead shrike	<i>Lanius ludovicianus</i>	Species of Special Concern (SSC)
Purple martin	<i>Progne subis</i>	SSC
Tricolored blackbird	<i>Agelaius tricolor</i>	CESA listed as threatened
Yellow-breasted chat	<i>Icteria virens</i>	SSC

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Common Name	Scientific Name	Status
Yellow warbler	<i>Setophaga petechia</i>	SSC
Least Bells vireo	<i>Vireo bellii pusillus</i>	CESA listed as endangered
Green sturgeon	<i>Acipenser medirostris pop. 1</i>	SSC
White sturgeon	<i>Acipenser transmontanus</i>	SSC, Candidate threatened species
Sacramento hitch	<i>Lavinia exilicauda exilicauda</i>	SSC
Sacramento splittail	<i>Pogonichthys macrolepidotus</i>	SSC
Western pond turtle	<i>Emys marmorata</i>	SSC
Winter-run Chinook salmon	<i>Oncorhynchus tshawytscha</i>	CESA listed as endangered
Loggerhead shrike		
Spring-run Chinook salmon	<i>Oncorhynchus tshawytscha</i>	CESA listed as threatened
Fall run/late fall run Chinook salmon	<i>Oncorhynchus tshawytscha</i>	SSC
Delta smelt	<i>Hypomesus transpacificus</i>	CESA listed as endangered
Longfin smelt	<i>Spirinchus thaleichthys</i>	CESA listed as threatened
Giant garter snake	<i>Thamnophis gigas</i>	CESA listed as threatened

Habitat descriptions and species profiles included in the draft EIR should include robust information from multiple sources: aerial imagery; historical and recent survey data; field reconnaissance; scientific literature and reports; U.S. Fish and Wildlife Service's (USFWS) Information, Planning, and Consultation System; California Aquatic Resources Inventory; and findings from "positive occurrence" databases such as California Natural Diversity Database (CNDDDB). Only with sufficient data and information can the Port adequately assess which special-status species are likely to occur in the Project vicinity.

CDFW recommends surveys be conducted for special-status species with potential to occur, following recommended survey protocols if available. Survey and monitoring protocols and guidelines are available at:

<https://www.wildlife.ca.gov/Conservation/Survey-Protocol>.

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Botanical surveys for special-status plant species, including those listed by the California Native Plant Society (<http://www.cnps.org/cnps/rareplants/inventory/>), should also be conducted during the blooming period for all sensitive plant species potentially occurring within the Project area and include the identification of reference populations. Please refer to CDFW botanical field surveyor qualifications and protocols for surveying and evaluating impacts to rare plants and required elements to include in a Botanical Survey Report that should be incorporated into the draft EIR available at: <https://www.wildlife.ca.gov/Conservation/Plants>.

IMPACT ANALYSIS AND MITIGATION MEASURES

The CEQA Guidelines (§§ 15126, 15126.2, & 15358) necessitate that the draft EIR discuss all direct and indirect impacts (temporary and permanent), including reasonably foreseeable impacts and cumulative impacts, that may occur on biological resources with implementation of the Project. This includes evaluating and describing impacts such as:

1. Potential for “take” of CESA-listed species;
2. Loss or modification of breeding, spawning, nesting, dispersal, and foraging habitat, including vegetation removal, alteration of soils and hydrology, soil erosion, and removal of habitat structural features (e.g., snags, roosts, breeding ponds, burrows, channel substrate piling footprint, hydroacoustic impacts);
3. Obstruction of movement corridors or access to water sources and other core habitat features;
4. Shipping traffic increase and marine mammal ship strikes, underwater noise pollution, fuel spills, and invasive species introductions via ballast water release from San Francisco Bay to the Port of Stockton. For example, the recent introduction of golden mussels detected at the Port of Stockton is currently posing a threat poses a significant immediate threat to the ecological health of the Delta and all waters of the state, water conveyance systems, infrastructure and water quality;
5. An evaluation of lighting and noise impacts from project construction and ongoing operations and maintenance.; and
6. Indirect Impacts. A discussion of potential indirect Project impacts on biological resources, including resources in areas adjacent to the Project footprint, such as adjacent natural habitats, riparian ecosystems, and wildlife corridors.

The CEQA document also should identify existing and reasonably foreseeable future projects in the Project vicinity, disclose any cumulative impacts associated with these

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projects, determine the significance of each cumulative impact, and assess the significance of the Project's contribution to each impact (CEQA Guidelines, §15355). Although a project's impacts may be insignificant individually, its contributions to a cumulative impact may be considerable; a contribution to a significant cumulative impact (e.g., reduction of available habitat for a listed species) should be considered cumulatively considerable without mitigation to minimize or avoid the impact.

The CEQA Guidelines direct the lead agency name, as the lead agency, to consider and describe in the draft EIR all feasible mitigation measures to avoid and/or mitigate potentially significant impacts of the Project on the environment based on comprehensive analysis of the potential direct, indirect, and cumulative impacts of the Project. (CEQA Guidelines, §§ 15021, 15063, 15071, 15126.2, 15126.4 & 15370.) This should include a discussion of take avoidance and minimization measures for special-status species, which are recommended to be developed in early consultation with the USFWS, National Marine Fisheries Service and CDFW. These measures can then be incorporated as enforceable Project conditions to reduce potential impacts to biological resources to less-than-significant levels.

Fully protected species such as white-tailed kite may not be taken or possessed at any time except in limited circumstances (Fish & G. Code, §§ 3511, 4700, 5050, & 5515). Therefore, the draft EIR should include measures to completely avoid take of fully protected species.

RECOMMENDATIONS

Based on the information provided in the NOP, CDFW offers the comment and recommendation below to assist the Port in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and/or indirect impacts on fish and wildlife (biological) resources. **Note that CDFW may provide additional recommendations as more Project specific information is disclosed. The draft EIR must include a full Project Description, Environmental Setting, and Impact Analysis and Mitigation Measures as outlined above.** Editorial comments or other suggestions may also be included to improve the document.

COMMENT 1: Enforceable Mitigation and Avoidance of Deferred Mitigation: The EIR should incorporate mitigation performance standards that would ensure that impacts are reduced to a less-than-significant level. Mitigation measures proposed in the EIR should be made a condition of approval of the Project. Please note that obtaining a permit from CDFW by itself with no other mitigation proposal may constitute mitigation deferral. CEQA Guidelines section 15126.4, subdivision (a)(1)(B) states that formulation of mitigation measures should not be deferred until some future time. To avoid deferring mitigation in this way, the EIR should describe avoidance, minimization and mitigation measures that would be implemented should the impact occur.

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ENVIRONMENTAL DATA

CEQA requires that information developed in EIRs 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 CNDDDB. The CNDDDB online field survey form and other methods for submitting data can be found at: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP in order to assist the Lead Agency in identifying and mitigating Project impacts on biological resources. CNDDDB can be found at: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

If you have any questions, please contact Andrea Boertien, Environmental Scientist, at (707) 317-0388 or Andrea.Boertien@wildlife.ca.gov; or Sara Kern, Senior Environmental Scientist (Supervisory) at (916) 531-4465 or Sara.Kern@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Erin Chappell
Erin Chappell
Regional Manager
Bay Delta Region

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