



April 23, 2020

Governor's Office of Planning & Research

APR 23 2020

Ms. Lina Velasco
City of Richmond, Planning Division
450 Civic Center Plaza
Richmond, CA 94804
Lina_Velasco@ci.richmond.ca.us

STATE CLEARINGHOUSE

Subject: Point Molate Mixed-Use Development Project, Supplemental Environmental Impact Report, SCH #2019070447, City of Richmond, Contra Costa County

Dear Ms. Velasco:

The California Department of Fish and Wildlife (CDFW) received a Subsequent Environmental Impact Report (SEIR) from the City of Richmond (City) for the Point Molate Mixed-Use Development Project (Project) pursuant to the California Environmental Quality Act (CEQA).

CDFW is submitting comments on the SEIR to inform the City, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project. CDFW is providing these comments and recommendations regarding those activities involved in the Project that are within CDFW's area of expertise and relevant to its statutory responsibilities (Fish and Game Code, § 1802), and/or which are required to be approved by CDFW (CEQA Guidelines, §§ 15086, 15096 and 15204).

CDFW ROLE

CDFW is a Trustee Agency with responsibility under CEQA (Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA), the Lake and Streambed Alteration (LSA) Program, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) should 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.

Ms. Lina Velasco
City of Richmond
April 23, 2020
Page 2 of 4

Lake and Streambed Alteration

CDFW requires an LSA 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, watercourses 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.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 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 section 2080.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Richmond

Description and Location: The Project site is located on the San Pablo Peninsula within the City of Richmond, in Contra Costa County. The Project site is bounded by the San Francisco Bay to the west, open space parcels to the north and south, and the Chevron Richmond refinery to the east. Approximately 142 acres of the approximately 413-acre Project site are submerged in the San Francisco Bay, leaving approximately 271 acres above water. The proposed Project consists of the mixed-use development of approximately 80 acres that includes residential and commercial uses, as well as supporting road and utility infrastructure. Approximately 180 acres of the Point Molate site would remain as open space with recreational trails.

COMMENTS AND RECOMMENDATIONS

CDFW offers the below comments and recommendations to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

Comment 1: Pier Reuse

The draft SEIR lacks an adequate Project description and impacts analysis for activities associated with the pier retrofitting. The existing pier is located adjacent to eel grass beds and within 0.75 miles of nursery sites for double crested cormorants and California harbor seals. The construction design, methods and timeline for pier retrofitting are not described within the SEIR, though it is noted that no work will occur in-water. CDFW recommends incorporating a full description of the retrofitting process and design, including all above-water work.

Ms. Lina Velasco
City of Richmond
April 23, 2020
Page 3 of 4

Potential impacts of pier and ferry operation are mentioned in Mitigation Measure 4.3-4 with regard to minimizing impacts to eel grass beds; however, the potentially significant impacts to special-status fish and wildlife species from increased traffic—both on the water and adjacent to the Bay—are not discussed. Potentially significant impacts of increased pier and ferry traffic include, *but are not limited to*: disturbance of breeding and/or nesting activities, loss or degradation of suitable habitat for special-status species, and direct mortality from ship strikes. CDFW recommends recirculating the SEIR with detailed analyses of operational impacts to fish and wildlife species and mitigation measures to reduce impacts to less-than-significant.

Comment 2: Special-Status Plants

The SEIR relies on biological site surveys conducted for the 2011 Final Environmental Impact Report, and subsequent pedestrian-level surveys completed in 2015, 2016, and 2019. The methods and results for the latter surveys are not provided within the SEIR or supporting appendices, yet it is concluded that the only special-status plant known to occur on-site is the Suisun Marsh aster. In supplement to the previously conducted surveys, Measure 4.3-2 calls for an additional botanical survey of the development footprint prior to construction to confirm that special-status plants with the potential to occur on-site have not established. CEQA requires that significant impact determinations and formulation of mitigation measures must occur before Project approval. It is unclear from the information provided in the SEIR if the impacts analysis for special-status plant species is adequate and that the mitigation measures have reduced impacts to less-than-significant. To ensure that the environmental setting is accurately described and that mitigation measures have reduced impacts to less-than-significant, CDFW recommends that the Project area be surveyed for special-status plants by a qualified botanist following the “Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities,” which can be found online at <https://wildlife.ca.gov/Conservation/Survey-Protocols>. This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. Results from surveys should follow the reporting requirements contained in the protocol and included in a recirculated SEIR. In the absence of protocol-level surveys being performed, additional surveys may be necessary.

Mitigation Measure 4.3-2 indicates that impacts to special-status plants shall be mitigated through transplanting or compensatory planting at a minimum ratio of 2:1. Transplantation and/or compensatory plantings alone may not adequately mitigate for impacts on the project site without appropriate monitoring, maintenance, and preservation measures. To ensure impacts to special-status plant species are reduced to less-than-significant, CDFW recommends Mitigation Measure 4.3-2 be revised to require compensatory mitigation at 3:1 mitigation ratio (conserved habitat to impacted habitat). If mitigation for impacted plant species is sought through off-site restoration or preservation, mitigation site(s) must be confirmed to support populations of the impacted species and must be preserved in perpetuity via establishment of a conservation easement. A qualified botanist or plant ecologist should prepare a Preservation Plan or Long-Term Monitoring Plan containing at minimum the following elements:

Ms. Lina Velasco
City of Richmond
April 23, 2020
Page 4 of 4

- A monitoring plan and quantifiable performance criteria for the preserved plant population(s).
- A description of remedial measures to be performed in the event that performance criteria are not met.
- A description of maintenance activities to be conducted on the site, including weed control, trash removal, irrigation, and control of herbivory by livestock and wildlife.

If a CESA-listed or state Rare¹ plant is identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, acquisition of take authorization through an ITP issued by CDFW pursuant to Fish and Game Code Sections 2081(b) and/or Section 1900 et seq is necessary to comply with Fish and Game Code CESA and the Native Plant Protection Act.

FILING FEES

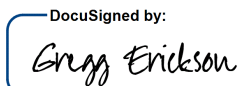
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order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

CONCLUSION

To ensure significant impacts are adequately mitigated to a level less-than-significant, the feasible mitigation measures described above should be incorporated as enforceable conditions into the final CEQA document for the Project. CDFW appreciates the opportunity to comment on the SEIR to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Jennifer Rippert, Environmental Scientist, at (707) 428-2069 or Jennifer.Rippert@wildlife.ca.gov; or Ms. Melissa Farinha, Senior Environmental Scientist (Supervisory), at (707) 944-5579.

Sincerely,

DocuSigned by:

BE74D4C93C604EA...
Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse #2019070447

¹ In this context, "Rare" means listed under the California Native Plant Protection Act.