

**Metropolitan Transportation Commission and Association of Bay Area Governments
Joint MTC ABAG Legislation Committee**

March 14, 2025

Agenda Item 3c

Assembly Bill 697 (Wilson): Resilient State Route 37 Corridor Permitting Legislation

Subject:

Enable the Resilient State Route (SR) 37 partners to advance the SR 37 program in the most cost-effective and environmentally beneficial manner by allowing corridor improvements to follow the California Endangered Species Act (CESA) process for permitting.

Background:

State Route 37 Corridor Needs Near-Term Mobility and Restoration Projects

SR 37 is an essential commute route for workers traveling between comparatively affordable housing in Solano County and jobs in Marin and Sonoma counties, a critical Northern California east-west freight link and an important North Bay emergency transportation corridor for the North Bay. The highway is plagued with heavy commute congestion with no public transit options. Idling vehicles not only contribute to the climate crisis and poor air quality but also threaten the sensitive habitat nearby.

The highway bisects the ecologically rich San Pablo Baylands (which is home to four animal species categorized as “fully protected species” under California law) and is vulnerable to the impacts of climate change. State, local and regional partners are coordinating on an integrated approach to address SR 37’s complex challenges – implementing near term mobility and ecological restoration improvements that address quality of life issues for North Bay residents, improve habitat and preserve accessibility while advancing a long-term vision of an elevated causeway that is resilient to sea level rise past 2100.

The near-term Sears Point to Mare Island project aims to pair mobility improvements – eliminating a 10-mile bottleneck by converting the existing road to a high occupancy vehicle lane and adding a new tolled lane – with flood mitigation and improvements that support up to 1,200 acres of near-term habitat restoration. Specifically, the project enhances up to 900 acres of habitat at Strip Marsh East and increases hydrological capacity at the Tolay Creek bridge, supporting near-term restoration of 250 – 300 acres and facilitates future restoration, anticipated to be more than 1,000 acres. In addition to habitat restoration, the near-term project provides

greenhouse gas reduction benefits by reducing Bay Area vehicle miles traveled by 20 million miles per year.

Current Law

California’s Fully Protected Species (FPS) law, established in the 1960s, was an early attempt to identify and provide protection to animals that were rare or faced possible extinction. The fully protected species list is detailed in statute and is not regularly reviewed or updated. Most fully protected species have also been listed as threatened or endangered species under the more modern California Endangered Species Act (CESA). While the FPS law strictly prohibits take of covered species (with limited exceptions), CESA provides a well-established permit process that allows for projects to proceed even if they risk disturbing covered species during sensitive periods – such as mating or nesting seasons – so long as they *minimize harm and fully mitigate* any negative impacts through conditions outlined in the permit.

Since 2012, the Legislature has enacted a half a dozen bills authorizing the California Department of Fish and Wildlife (CDFW) to permit for the incidental take of fully protected species in connection to specific projects as well as several bills providing more general exemptions. These typically include requirements that CDFW ensure take is avoided to the greatest extent possible, and that conservation measures are implemented to mitigate for any take that does occur. In 2023, the legislature passed Senate Bill (SB) 147 which authorizes CDFW to issue fully protected species take permits under CESA for certain categories of transportation, renewable energy, and water infrastructure projects. However, CDFW has determined that the Sears Point to Mare Island project is not covered under the SB 147 transportation exception because of the transportation eligibility being limited to “non-capacity increasing” projects.

Assembly Bill 697 Overview

Assembly Bill (AB) 697 (Wilson) would allow resilient SR 37 projects – including the near-term Sears Point to Mare Island improvement projects – to seek permits under the CESA process for authorized take of fully protected species, so long as the impacts are fully mitigated. It also conditions the authorized take permit on the project meeting the conservations standards and other permitting thresholds listed in SB 147.

Recommendation:

Support / Commission Approval

Discussion

State, local and regional partners – including MTC – have been coordinating for years on integrated approach to address SR 37’s complex challenges. Specifically, MTC together with Caltrans, Napa Valley Transportation Authority (NVTA), Solano County Transportation Authority (STA), Sonoma County Transportation Authority (SCTA), the Transportation Authority of Marin (TAM) have been partnering on the Resilient 37 corridor program since the mid-2010s and have since been joined by other transportation partners, including the Sonoma Marin Area Rail Transit Authority.

Since 2022, MTC and transportation partner staff have been meeting monthly with staff from state, regional and federal resource agencies, including CDFW, the San Francisco Bay Conservation and Development Commission (BCDC), San Francisco Regional Water Quality Control Board, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, NOAA Fisheries, and the U.S. Army Corps of Engineers. This cross-sectional collaboration was formalized in 2023 when the California State Transportation Agency, California Natural Resources Agency, CDFW, Caltrans District 4, MTC and BCDC signed the SR 37 Partnership Agreement, committing to advance near and long-term SR 37 mobility, resilience, equity and ecological enhancements. This includes near-term integrated mobility and restoration improvements from Sears Point to Mare Island.

AB 697’s aim – enabling the Resilient 37 partners to advance the SR 37 program in the most cost-effective and environmentally beneficial manner – is consistent with the Partnership Agreement and MTC’s longstanding support for SR 37 improvements that improve mobility and restore critical habitat while enhancing resilience. Notably, the concept for AB 697 was proposed and refined during the transportation and regulatory agency staff meetings referenced above; the integrated Sears Point to Mare Island project was identified as an ideal candidate given the significant restoration benefits of the project. The specific habitat restoration improvements integrated into the Sears Point to Mare Island project were prioritized for inclusion based on technical assistance from several of those same state regulatory experts as well as North Bay environmental partners. Further, they are consistent with the 2024 North Bay Baylands Regional Conservation Investment Strategy, which MTC developed in partnership with Caltrans, the San Francisco Estuary Partnership, SCTA and the Environmental Science Associates.

The other option is to proceed ***without a permit***. This approach would significantly delay delivery of the improved SR 37 (work windows would shrink to an estimated 10 -12 weeks per year compared to 6 -7 months), drivers would face much longer construction delays, and costs would increase substantially. From an ecological perspective, shrinking the work windows would meet the FPS law's standard of avoiding interaction with fully protected species during sensitive periods. However, because the short work windows would double the number of construction seasons required to complete the project, it would also increase the number of (and overall duration of) project related disturbances to the fully protected species. Further, without the conditions included in a permit, CDFW would have no regulatory authority to ensure impacts are fully mitigated. As such, the preferred path from both a project delivery ***and*** environmental impact standpoint is to pursue an incidental take permit under CESA.

Staff recommends MTC support this bill for the reasons outlined above, consistent with Item 7 in the state portion of MTC/ABAG's 2025 Joint Advocacy Program.

Known Positions

Support

STA (sponsor), NVTa, SCTA, Bay Area Council, North Bay Leadership Group

Opposition

No known opposition

Attachments:

- None



Andrew B. Fremier