

CALIFORNIA STATE LANDS COMMISSION

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Established in 1938

July 6, 2020

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7/6/2020

File Ref: SCH #2019039050

Governor's Office of Planning & Research

Jul 07 2020

STATE CLEARINGHOUSE

Sally Gee
Los Cerritos Wetlands Authority
100 N. Old San Gabriel Canyon Rd.
Azusa, CA 91702

VIA ELECTRONIC MAIL ONLY (sgee@rmc.ca.gov)

Subject: Draft Program Environmental Impact Report (PEIR) for the Los Cerritos Wetlands Restoration Plan, East Long Beach and North Seal Beach areas, Los Angeles County and Orange County

Dear Ms. Gee:

The California State Lands Commission (Commission) staff has reviewed the subject Draft PEIR for the Los Cerritos Wetlands Restoration Plan (Program), which is being prepared by the Los Cerritos Wetlands Authority (LCWA). The LCWA, as the public agency proposing to carry out the Project, is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The Commission is a trustee agency for projects that could directly or indirectly affect sovereign land and their accompanying Public Trust resources or uses. Additionally, because the Project involves work on sovereign land, the Commission will act as a responsible agency.

Commission Jurisdiction and Public Trust Lands

The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6009, subd. (c); 6009.1; 6301; 6306). All tidelands and submerged lands granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust Doctrine.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the state for statewide Public Trust purposes, which include but are not limited

to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

Lease 9005.9, a General Lease – Public Agency Use (Lease), was issued to the LCWA by the Commission for use of a parcel of state-owned sovereign land located in the city of Seal Beach, adjacent to Pacific Coast Highway, the San Gabriel River channel, and 1st Street. Under the Lease, the LCWA is currently authorized to perform debris clean-up, invasive species abatement, and conduct escorted and supervised public education programs within the parcel. The Draft PEIR proposes to construct a visitor center and parking area within the existing lease area. As these uses are not currently authorized and the existing lease will expire on August 13, 2022, the LCWA will need to apply for a new lease from the Commission for any proposed construction activities and uses planned for the State Lands parcel. As part of that application, a detailed project description, including construction drawings with a site plan, will be required.

Please note that the State Lands parcel is subject to four other leases with authorizations for various uses: Lease 3154.9, a General Permit – Public Agency Use to the city of Los Angeles Department of Water and Power for a water intake structure; PRC 5283.9, a General Permit – Public Agency Use to the city of Seal Beach for a bicycle trail and transportation corridor, and appurtenant improvements; Lease 5981.1, a Right-of-Way Easement to the Southern California Edison Company for an overhead transmission line; and Lease 8726.9, a General Lease – Public Agency Use to the Orange County Flood Control District for access to the Los Alamitos Retention Basin. To ensure there are no conflicting uses proposed with any existing lessees, the LCWA will be required to obtain letters of concurrence from each lessee acknowledging and agreeing to any proposed construction activities and uses within the parcel.

Project Description

The purpose of the Draft PEIR is to identify the significant environmental impacts of the proposed program, to identify alternatives to the proposed program, and to indicate the manner in which those significant effects could be mitigated or avoided. It serves as a first-tier environmental document and the foundation for subsequent CEQA analysis. The goals and objectives of the proposed Program would:

- Restore tidal wetland processes and functions to the maximum extent possible
- Maximize contiguous habitat areas and maximize the buffer between habitat and sources of human disturbance.
- Create a public access and interpretive program that is practical, protective of sensitive habitat and ongoing oil operations, economically feasible, and will ensure a memorable visitor experience.
- Incorporate phasing of implementation to accommodate existing and future potential changes in land ownership and usage, and as funding becomes available.

- Strive for long-term restoration success.
- Integrate experimental actions and research into the project, where appropriate, to inform restoration and management actions for this project.

From the Program Description, Commission staff understands that the Program would include the following component that has the potential to affect State sovereign land:

- Potential public access improvements and visitor amenities - would include building a Seal Beach Visitor Center and associated parking on an existing raised building pad on the State Lands Parcel site in the South area within the next 10 years.

The Draft PEIR identifies Alternative 2 as the Environmentally Superior Alternative. This alternative would reduce impacts to biological resources, greenhouse gas emissions, and energy use, but does not reduce impacts related to air quality, cultural and tribal resources, and noise and vibration.

Environmental Review

Commission staff requests that the LCWA consider the following comments on the Project's Draft PEIR to ensure that impacts to State sovereign land are adequately analyzed for the Commission's use of the PEIR and subsequent environmental documents to support a future lease approval for the Program.

General Comments

1. Public Agency Approvals: Table 2-18 states that the approval required by the Commission would be an encroachment permit. However, the Programs construction would require a lease from the Commission, not an encroachment permit. Staff requests that the correct approval be reflected in the table.

Project Description

2. The Program (per page 2-34 of the PEIR) includes the construction of a Seal Beach Visitor Center and associated parking on an existing raised building pad on the State Lands parcel site as shown in black on Figure 3.3-1a. However, it is unclear how the remainder of the parcel would be used. Figure 2-12 includes a call-out that reads "raise the building pad" and only depicts restoration activities on the eastern side of the parcel, yet Figure 2-16 shows pathways through the central and western portions of the parcel. Commission staff request that further detail be provided as to the buildout of the State Lands parcel (also see Comment #3 below for additional remarks).

Biological Resources

3. Depending on the proposed layout for the visitor center and parking noted in Comment #2, the facility could destroy areas designated as potential Environmentally Sensitive Habitat Areas (ESHA) as shown in Figure 3.3-3a. This

area also contains special-status plants, chiefly Lewis' evening primrose and Southern tarplant. Commission staff request that the Commission be included in discussions with the California Coastal Commission (CCC) in regard to ESHA determinations and that the detail requested above also include whether (per Mitigation Measure [MM] BIO-1), revegetation of special-status plant species would occur on the State Lands parcel.

Climate Change

4. Sea-Level Rise. A tremendous amount of State-owned lands and resources under the Commission's jurisdiction will be impacted by rising sea levels. Because of their nature and location, these lands and resources are already vulnerable to a range of natural events, such as storms and extreme high tides.

Governor Brown issued Executive Order B-30-15 in April 2015, which directs state government to fully implement the Safeguarding California Plan and factor in climate change preparedness in planning and decision making. The Safeguarding California Plan sets forth "actions needed" to safeguard ocean and coastal ecosystems and resources as part of its policy recommendations for state decision-makers. In addition, the State of California released the 2018 Update to the Safeguarding California Plan in January 2018 to provide policy guidance for state decision-makers as part of continuing efforts to prepare for climate risks.

Please note that when considering lease applications, Commission staff will (1) request information from applicants concerning the potential effects of sea-level rise on their proposed projects, (2) if applicable, require applicants to indicate how they plan to address sea-level rise and what adaptation strategies are planned during the projected life of their projects, and (3) where appropriate, recommend project modifications that would eliminate or reduce potentially adverse impacts from sea-level rise, including adverse impacts on public access.

As noted above, Commission staff will require details of how the Program complies with the Safeguarding California Plan, and how the proposed visitor center facilities on state lands would address the potential effects of sea-level rise. Under Section 3.6.2.2 (page 3.6-3) of the Draft PEIR, it states "Adaptation strategies are not included in this report directly, but the project design did consider sea level rise." A sea-level rise analysis was included in Appendix H (*Hydrodynamic Modeling Technical Report*) to the PEIR; however, this data was not carried forward into the PEIR, nor was the Appendix referenced in Section 3.6.2.2. Commission staff suggest that a summary of this information be included in the Draft PEIR, or at minimum, a reference to Appendix H added to more easily direct the public to the data.

Tribal Cultural Resources and Consultation

5. Consultation and outreach on the Program began on June 17, 2019. California Native American Tribes who consulted with LCWA pursuant to AB 52 indicated that

the Program area is culturally sensitive and important, and expressed support for the restoration of the wetlands. The Tribes also provided input on several cultural MMs, which was incorporated.

The Program includes areas that, during review of the 2019 Los Cerritos Wetlands Oil Consolidation and Restoration Project (Oil Consolidation Project, which is a separate project whose lands are also included in the Program area), were identified by Tribal representatives (Gabrieleno Band of Mission Indians - Kizh Nation) as a Tribal cultural landscape. The Gabrieleno-Tongva San Gabriel Band of Mission Indians, as well as a member of the Juaneño Band of Mission Indians, Acjachemen Nation also participated in consultation on that project and described the Oil Consolidation Project site as “Sacred Lands that are part of a larger area of connected tribal sites that constitute a Tribal Cultural Landscape that may be eligible for listing by the National Register as a Tribal Cultural Property.” The LCWA also notes, however, that the area “was not and has not since been formally documented or evaluated for listing in the National Register or California Register.” (Draft PEIR page 3.15-7)

Notwithstanding the fact that the PEIR area has not been evaluated for eligibility for the State or National Registers, CEQA provides discretion to lead agencies to determine and define a Tribal Cultural Resource. Given that during previous projects in the area numerous prehistoric burials and various artifacts were discovered, and as a result of Consultation the Tribes communicated the importance of the area to tribal culture and history, Commission staff agrees with the LCWA’s “determination to treat this tribal cultural landscape as a historical resource for the purposes of this PEIR[.]” (Draft PEIR page 3.4-28). Staff suggests, however, that the LCWA clarify or provide a footnote of explanation under Impact TRI-1 to prevent confusion by the reader. Impact TRI-1 concludes that no mitigation is required because “This tribal cultural landscape has not been formally documented, geographically defined, nor has it been evaluated for listing in the California Register or for listing in a local register of historical resources. As such, no impacts would occur.” While this is a technically true statement given that the area has not officially been listed or determined eligible, the LCWA has determined the cultural landscape to be a significant Tribal Cultural Resource. Consider adding text to this section making this important distinction and pointing the reader to the analysis and conclusion contained in the Impact TRI-2 section that follows.

The Draft PEIR concludes that even with the implementation of MMs, some archaeological resources that contribute to the landscape’s significance as a Tribal cultural resource would not be avoided or preserved in place; therefore, impacts to Native American or prehistoric archaeological resources that convey the significance of the Tribal cultural landscape are considered significant and unavoidable. Continued engagement and Consultation with the affected tribes as project level analyses proceed will be critical to ensuring Native heritage and culturally important natural resources. Commission staff encourage LCWA to strive for full implementation of all mitigation measures that describe Tribal co-management of the

restoration areas including incorporating Tribal input on native vegetation and habitats.

Generally speaking, for a program level document, Commission staff understands the determination that changes to the significance of Tribal cultural resources are significant and unavoidable, given the reasonable uncertainty that exists at this tier. Staff suggests, however, that LCWA develop and describe how various *project level* CEQA documents tiered from this PEIR could feasibly incorporate the identified mitigation measures such that individual projects may not have a significant and unavoidable effect. Presenting a clearer roadmap in this document would greatly enhance the LCWA's substantial evidence that the measures in the PEIR represent all feasible ways to reduce and avoid effects.

6. Title to Resources: The PEIR should also mention that the title to all abandoned shipwrecks, archaeological sites, and historic or cultural resources on state parcels, or in the tide and submerged lands of California, is vested in the State and under the jurisdiction of the Commission (Pub. Resources Code, § 6313). Commission staff requests that the LCWA consult with Staff Attorney Jamie Garrett should any cultural resources on state lands be discovered during construction of the proposed Project. In addition, Commission staff requests that the following statement be included in the EIR's Mitigation and Monitoring Plan: "The final disposition of archaeological, historical, and paleontological resources recovered on state lands under the jurisdiction of the California State Lands Commission must be approved by the Commission."

Thank you for the opportunity to comment on the Draft PEIR for the Project. As a responsible and trustee agency, the Commission will need to rely on the certified PEIR for the issuance of any lease as specified above and, therefore, we request that you consider our comments prior to certification of the PEIR. Please send copies of future Project-related documents, including electronic copies of the Final PEIR, Mitigation Monitoring and Reporting Program, Notice of Determination, CEQA Findings and, if applicable, Statement of Overriding Considerations, when they become available. Please refer questions concerning environmental review to Cynthia Herzog, Senior Environmental Scientist, at (916) 574-1310 or cynthia.herzog@slc.ca.gov. For questions concerning archaeological or historic resources under Commission jurisdiction, please contact Staff Attorney Jamie Garrett, at (916) 574-0398 or jamie.garrett@slc.ca.gov. For questions concerning Commission jurisdiction, please contact Drew Simpkin, Public Lands Management Specialist, at (916) 574-2275 or drew.simpkin@slc.ca.gov.

Sincerely,



Eric Gillies, Acting Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
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