

CALIFORNIA STATE LANDS COMMISSION

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STATE CLEARINGHOUSE

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**Subject: Notice of Preparation for an Environmental Impact Statement/
Environmental Impact Report for the Tahoe Keys Lagoons Aquatic
Weed Control Methods Test Project, El Dorado County**

Dear Lead Agency Representatives:

The California State Lands Commission (Commission) staff have reviewed the Notice of Preparation (NOP) for the Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Tahoe Keys Lagoons Aquatic Weed Control Methods Test Project (Project), which is being prepared by the Lahontan Regional Water Quality Control Board (LRWQCB), and Tahoe Regional Planning Agency (TRPA). The LRWQCB is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), and TRPA is the lead agency pursuant to Articles 4 and 6 of the TRPA Rules of Procedure for preparation of a TRPA EIS. The Commission is a trustee agency for projects that could directly or indirectly affect State sovereign land and their accompanying Public Trust resources or uses. Additionally, if the Project involves work on State sovereign land, the Commission will act as a responsible agency and Commission staff requests that the LRWQCB consult with us on preparation of the Draft EIS/EIR as required by CEQA section 21153, subdivision (a), and the State CEQA Guidelines section 15086, subdivisions (a)(1) and (a)(2).

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. All tidelands and submerged lands, 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 navigable non-tidal waterways, including lakes, the state holds fee ownership of the bed of the waterway landward to the ordinary low-water mark (OLWM) and a Public Trust easement landward to the ordinary high-water mark (OHWM), except where the boundary has been fixed by agreement or a court of proper jurisdiction. Such boundaries may not be readily apparent from present day site inspections.

State sovereign land under the jurisdiction of the Commission is limited to the natural bed of Lake Tahoe at and below elevation 6,223 feet, Lake Tahoe Datum (LTD). This elevation also serves as the OLWM for Lake Tahoe. Figure 1 of the NOP appears to limit Project activities to within the interior of the artificial Tahoe Keys lagoon, which is outside the Commission's jurisdiction. Therefore, the Project, as currently proposed, does not extend onto State sovereign land and will not require a lease or authorization from the Commission. However, if the Project is altered and will encroach on State sovereign land, a lease or authorization from the Commission will be required.

In addition, a Public Trust easement exists within Lake Tahoe lying at and below elevation 6,228.75 feet, LTD, which also serves as the OHWM for Lake Tahoe. The public may use this easement area for Public Trust purposes. The use of the easement may be limited only to the extent and duration necessary to accomplish a public purpose such as protecting sensitive species, protecting identified cultural or historic resources, or ensuring the safety of the general public. If any portions of the Project will occur at or below the OHWM, the Commission will require that the Project include provisions to minimize the interference with public rights in this easement area. In particular, the Project should ensure that public access is provided over or around any proposed improvements or Project areas.

Project Description

The Tahoe Keys Property Owners Association (TKPOA) has submitted a permit application to the LRWQCB and TRPA to implement the Project. The Project will test various control methods for three target species in the Tahoe Keys lagoon; Eurasian watermilfoil, Curlyleaf pondweed, and Coontail. The Project is intended to learn more about the efficacy of potential impacts of new aquatic invasive species (AIS) control technologies and the potential use of herbicides in the Tahoe Keys lagoon. TKPOA is seeking an exemption to the Basin Plan for the Lahontan Region for prohibition of the

use of aquatic pesticides, and approval from TRPA to test aquatic herbicides as a potential AIS control tool. The Project will include the following treatment methods:

- Group A: Large-scale treatment methods for addressing target aquatic weeds using aquatic herbicides and or large-scale ultraviolet light. Three aquatic herbicides have been identified as potential methods of treatment based on the weeds they are intended to target: Endothall, Triclopyr, Penoxsulam, and ProcellaCOR.
- Group B: Localized treatment methods for addressing target aquatic weeds, including ultraviolet light spot treatments, bottom barriers, diver-assisted suction and diver hand pulling techniques.

Figure 1 of the NOP identifies the proposed treatment sites within the Tahoe Keys lagoon.

Environmental Review

Commission staff requests that the lead agencies consider the following comments when preparing the EIS/EIR.

General Comments

1. Project Description: The Project Description should describe any proposed use of the navigation channel entrance from Lake Tahoe for Project activities (entering/exiting activities between the Tahoe Keys and Lake Tahoe), including delivery and removal of equipment, personnel, work vessels, removed plant materials, etc.

For containment of plant fragments, the Project Description should attempt to distinguish existing practices within the Tahoe Keys and any new proposed methods as part of the Project, including any efforts to prevent plant fragments from entering Lake Tahoe from the Tahoe Keys.

For use of aquatic herbicides, the Project Description must provide clear details for how the treatment sites will be contained to prevent leaching into unintended locations within the Tahoe Keys. Water quality monitoring should be conducted surrounding treatment sites to ensure containment and to detect leaching outside of treatment sites. Additional monitoring should also be conducted at the navigation channel entrance to Lake Tahoe to ensure no impact to the lake.

2. Project Alternatives: At the June 27, 2019, public meeting for the Project at TRPA, there was considerable discussion and recommendation for development of an alternative to install a dam or barrier at the navigation channel entrance and interface with Lake Tahoe. Please ensure that the EIS/EIR provides detailed description and illustration on the specific location and lake bottom elevations of the dam. Please be advised that the portion of the navigation channel on the bed of Lake Tahoe is under lease with the Commission, pursuant to Lease PRC 5331. If the proposed dam or structure encroaches within the lease premises, or in general

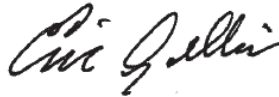
on State sovereign land, then this activity will require authorization from the Commission, and the Commission will act as a responsible agency for the Project.

Within the Tahoe Keys, given the past presence of aquatic plants (including the target species) within and near the bulkhead channel connecting to Lake Tahoe, Commission staff encourages the lead agencies to consider an alternative for treatment site testing for this area, with the exception of aquatic herbicide treatment. This area should be considered for treatment testing, given the direct connection to Lake Tahoe.

Thank you for the opportunity to comment on the NOP for the Project. As a trustee and potential responsible agency, Commission staff requests that you consult with us on this Project and keep us advised of changes to the Project Description and all other important developments. Please send additional information on the Project to the Commission staff listed below as the EIS/EIR is being prepared.

Please refer questions concerning environmental review to Jason Ramos, Senior Environmental Scientist, at (916) 574-1814 or jason.ramos@slc.ca.gov. For questions concerning Commission leasing jurisdiction, please contact Al Franzoia, Public Land Management Specialist, at (916) 574-0992 or al.franzoia@slc.ca.gov.

Sincerely,



Eric Gillies, Acting Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
J. Ramos, Commission
A. Franzoia, Commission
W. Crunk, Commission