

July 24, 2019

Governor's Office of Planning & Research

California State Lands Commission
Attention: Eric Gillies, Acting Chief
Division of Environmental Planning and Management
100 Howe Avenue, Suite 100 – South
Sacramento, CA 95825-8202

AUG 02 2019

STATE CLEARINGHOUSE

Subject: Response to Comments on Draft Environmental Assessment/Initial Study/Mitigated Negative Declaration (EA/IS/MND) for the Lower American River Anadromous Fish Habitat Restoration Project, Sacramento County (SCH #2019069088)

Dear Mr. Gillies:

Thank you for your review of the Draft EA/IS/MND for the Lower American River (LAR) Anadromous Fish Habitat Restoration Project (Project). The City's responses to your comments are shown below. (text additions are underlined and deletions are shown in ~~strike-out~~). To expedite a timely receipt of a lease agreement by August 8 that facilitates restoration work in 2019, the City has clarified its mitigation measures to include your mitigation language verbatim in all cases.

NEED FOR LEASE AGREEMENT

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

After reviewing the EA/IS/MND, portions of the Project area include the bed of the LAR, which is subject to the Commission's leasing jurisdiction. Proposed work within the Commission's jurisdiction will require a lease from the Commission, and work within these areas must be compatible with the Public Trust easement. As such, an application should be submitted to the Commission as soon as possible. Please contact Dobri Tutov for additional information (see contact information at end of letter). A copy of the Commission's lease application can be found at the following website: <https://www.slc.ca.gov/wp-content/uploads/2018/07/LeaseApp.pdf>.

Response: The City plans to submit a lease application for the project by July 30, 2019 and requests a lease agreement by August 8 to enable this year's restoration activities at Sailor Bar.

GENERAL COMMENTS

1. *Project Description.* Page 8 of the Draft EA/EIS states "The restoration sites are accessible by Gold Country Boulevard, Nimbus Road, Illinois Avenue, Olive Avenue, South Bridge Street, El Manto Drive, and Rod Beaudry Drive and are located on lands held by Sacramento County." However, the LAR is also under the jurisdiction of the Commission. As noted above, a lease will required for activities within the bed of the LAR.

On page 16, under Construction and Operational Safety, this section describes how recreational boat traffic will be addressed during construction. The two solutions presented include 1) verbally communicating with recreational boaters to warn them of ongoing downstream in-river work, and 2) communicating via radio with downstream construction equipment operators to temporarily stop in-river work until boater traffic has safely passed the restoration site. Additionally, signs would be posted upstream of construction areas to warn boaters of the location and schedule of upcoming in-river work. Commission staff suggest that in addition to these practices, the City and Reclamation present the Project schedule with maps of the locations and a schedule of activities on their websites to further notify recreational users of the construction activities.

Response: Incorporating your comments, the City has clarified the EA/IS Project Description (page 16, "Construction and Operational Safety") as follows:

Construction and Operational Safety

In-river work would occur during flows of less than 4,000 cfs. To ensure boater safety during restoration work, in-river safety personnel would be posted upstream of each site when boater traffic is heavy, typically Fridays and would implement the following safety measures: 1) verbally communicate with recreational boaters to warn them of ongoing downstream in-river work, and 2) communicate via radio with downstream construction equipment operators to temporarily stop in-river work until boater traffic has safely passed the restoration site. Additionally, signs would be posted upstream of construction areas to warn boaters of the location and schedule of upcoming in-river work. Prior to, and during construction, the City and Reclamation will post a project schedule and map of work locations on their respective websites, to further notify recreational users of planned construction activities.

2. *Public Agency Approvals.:* Responsible agencies are identified in the Introduction (page 6); however, no table was included to fully identify all agency approvals required for the Project to proceed. Commission staff request that this table be compiled and included in the EA/IS/MND and identify the Commission as a responsible agency.

Response: Incorporating your comments, the City has clarified the EA/IS Background section (page 6, "Section 1.1.2 Current Environmental Review") as follows:

The City is the CEQA lead agency for the Proposed Action because it is responsible for physically implementing the construction of LAR habitat improvements, is a signatory to the Sacramento Water Forum Agreement and has served as the local partner on past LAR habitat improvements associated with the CVPIA, in coordination with Reclamation. Note: The Sacramento Area Flood Control Agency (SAFCA) is a Responsible Agency under CEQA for this project because it must meet a gravel augmentation requirement in the LAR due to SAFCA's past participation as a local partner to the Corps in the Folsom Dam Joint Federal Project. The City acknowledges that the State Lands Commission is a responsible agency under CEQA.

Several agencies other than the City and Reclamation have an interest in implementation of the project, as identified below.

NEPA Cooperating Agencies

The following Federal agencies are cooperating agencies under NEPA:

- National Marine Fisheries Service
- U.S. Army Corps of Engineers
- U.S. Fish and Wildlife Service

CEQA State Responsible and Trustee Agencies

The following State agencies are potential responsible or trustee agencies under CEQA:

- California Department of Conservation
- California Department of Fish and Wildlife (trustee agency)
- California Department of Toxic Substances Control
- California Department of Transportation
- California Native American Heritage Commission
- California Office of Historic Preservation
- California State Lands Commission (responsible agency)
- Central Valley Flood Protection Board
- Central Valley Regional Water Quality Control Board
- State Water Resources Control Board

The City has also extended the same courtesy afforded to trustee agencies to Native American Tribes that identified an interest in the project.

CEQA Regional and Local Responsible Agencies

The following regional and local agencies are potential responsible agencies under CEQA:

- Sacramento Area Flood Control Agency
- County of Sacramento
- Sacramento Metropolitan Air Quality Management District

AGRICULTURAL AND FORESTRY RESOURCES

3. *Trees. The Draft EA/IS/MND states that up to 20 trees may need to be removed at each site, although trees removal would be avoided to the extent feasible. The document further states that the removal of up to 20 trees per site over the 16 years of the Proposed Action would not convert forest land to a non-forest use and would, therefore, be a less-than-significant impact.*

The impacts to trees are only evaluated under Agriculture and Forestry Resources, not under Biological Resources. Commission staff disagree that the removal of approximately 60 trees per year (based on three sites per year) is a less-than-significant impact. Especially since the diameter and species of the trees is not disclosed. Commission staff request that tree removal impacts be treated as a potentially significant impact, with mitigation requiring a certified arborist to do a pre-construction survey to identify the species of trees and any sensitive habitats (i.e., nesting, critical habitat designations, etc.), and an acceptable replacement ratio determined in coordination with the California Department of Fish and Wildlife (CDFW).

Response: The City is hereby clarifying that restoration activities would not occur in every year due to funding constraints; only one or two sites may be restored in some years rather than 3 sites, and fewer than 20 trees would be removed in most, if not all, years. Consequently, tree removal would be substantially less than 60 trees per year for the project's duration although the City has used the 20-tree threshold as a maximum number of trees removed at a site. Substantial evidence has not been provided to support a conclusion that this impact is potentially significant. However, to fully

implement your mitigation recommendations, the City has clarified proposed Mitigation Measure BIO-4, as follows:

Mitigation Measure BIO-4: Minimize Effects on Special-status Species and ~~Other~~ Nesting Birds.

The City/Water Forum and its construction contractor(s) shall implement the following measures to avoid and minimize potential adverse effects on special-status species and ~~other~~-nesting birds during project implementation:

- Before project activities begin, worker Environmental Awareness Training shall be provided to inform agency staff and contractors of the need to avoid and minimize potential impacts on special-status species and nesting birds and the possible penalties for not complying with these requirements. The training shall include, at a minimum, species identification, habitat requirements, and required practices for their avoidance and protection. A designated enforcement lead shall be identified to employees and contractors to ensure that questions regarding avoidance and protection measures are addressed in a timely manner.
- If vegetation removal is required during the bird nesting season (February 1 through August 15), surveys for active bird nests shall be conducted by a qualified biologist in areas of suitable nesting vegetation designated for removal. A minimum of one survey shall be conducted no more than 7 days before vegetation removal occurs. If active nests are found, removal of vegetation in which the nests are located shall be delayed until a qualified biologist determines that the young have fledged or the nest site is otherwise no longer in use.
- Preconstruction surveys will be conducted by a certified arborist to identify the species of trees and any sensitive habitats (i.e., nesting, critical habitat designations, etc.), and an acceptable replacement ratio determined in coordination with CDFW.
- Preconstruction surveys for special-status plant species, including Sanford's arrowhead, shall be conducted by a qualified biologist, and the City will coordinate with CDFW if the species is found within the project boundary subject to ground disturbance.
- Preconstruction surveys for special-status reptiles, including Western pond turtle, shall be conducted by a qualified biologist, and the City will coordinate with CDFW if the species is observed within the project boundary subject to ground disturbance.
- Preconstruction surveys for active nests of burrowing owl, Swainson's hawk, white-tailed kite, bank swallow, purple martin, and colonial nesting herons and egrets shall be conducted by a qualified biologist in all areas of suitable nesting habitat that could be disturbed by project activities. A minimum of two surveys shall be conducted within 14 days before project activities begin, including at least one survey no more than 7 days before activities begin.
- Appropriate buffers shall be established and maintained around active nest sites to avoid nest failure from project activities. The appropriate size and shape of the buffers shall be determined by a qualified biologist and may vary depending on the nest location, nest stage, construction activity, and existing disturbance levels. The buffers may be adjusted if a qualified biologist determines it would not be likely to adversely affect the nest. Monitoring shall be conducted to confirm that project activities are not resulting in detectable adverse effects on nesting birds or their young. No project activities shall occur within the buffer areas until a qualified biologist determines that the young have fledged or the nest site is otherwise no longer in use.

Timing: Before and during ground-disturbing activities.

Responsibility: City/Water Forum and Construction Contractor(s)

BIOLOGICAL RESOURCES

4. *Plants. The EA/IS/MND states that Sanford's arrowhead is the only special-status plant species known to occur in the Project vicinity and that the species has been found along the river, within 3 miles of restoration sites. The document concludes that, "Because Sanford's arrowhead occurs in slow-moving waters, it is very unlikely to occur in areas of project-related disturbance, and unlikely to be adversely affected by project implementation. Therefore, impacts to plants are less than significant."*

As Project construction would be conducted along the river in various locations, and the species has been found relatively close to the Project, Commission staff believe that the species has the potential to occur; therefore, the impact should be considered potentially significant and mitigation for pre-construction surveys and coordination with CDFW should be required if the species is identified.

Response: The presence of Sanford's arrowhead in the disturbed areas is highly unlikely and substantial evidence has not been provided to support a conclusion that this impact is potentially significant. However, to fully implement your mitigation recommendations, the City has clarified proposed Mitigation Measure BIO-4, as presented in the previous section.

5. *Fish. Impacts to fish from accidental spill or exposure to hazardous materials, and suspended sediment and turbidity levels are discussed on page 31 of the EA/IS/MND and page 33 discusses nursery sites for juvenile fish. Both impacts conclude that with inclusion of mitigation measure (MM) GEO-1, the impacts would be reduced to a less-than-significant level.*

MM GEO-1 begins with the words "if required." The MM does not address what measures will be implemented if the particular Project site does not require a Stormwater Pollution Prevention Plan, which is often the case for sites less than one acre. In order to effectively reduce impacts to fish species, the EA/IS/MND must clearly lay out what measures will be implemented to avoid exposure to hazardous materials and turbidity. As written, the MM does not appear to be sufficient.

Response: To fully implement your mitigation recommendations, the City has clarified proposed Mitigation Measure GEO-1, as follows:

Mitigation Measure GEO-1: Prepare and Implement a Storm Water Pollution Prevention Plan and Associated Best Management Practices.

When required, the City/Water Forum shall prepare and implement the appropriate Stormwater Pollution Prevention Plan (SWPPP), or Stormwater Management Plan (SWMP), as needed, to prevent and control pollution and to minimize and control runoff and erosion in compliance with State and local laws. The SWPPP or SWMP shall identify the activities that may cause pollutant discharge (including sediment) during storms or strong wind events, techniques to control pollutant discharge, and an erosion control plan. Regardless of the need for a SWPPP or SWMP, construction techniques and BMPs will be identified and implemented, as appropriate to reduce the potential for runoff, exposure to hazardous materials, and manage turbidity. Construction techniques will include minimizing site disturbance, controlling water flow over the construction site, stabilizing bare soil, and ensuring proper site cleanup. BMPs that specify erosion and sedimentation control measures to be implemented, may include silt fences, staked straw bales/wattles, silt/sediment basins and traps, geofabric, trench plugs, terraces, water bars, soil stabilizers re-seeding with native species and mulching to revegetate disturbed areas. If suitable vegetation cannot reasonably be expected to become established, non-erodible material will be used for such stabilization.

If required, the SWPPP or SWMP shall also include a spill prevention, control, and countermeasure plan,

and applicable hazardous materials business plans, and shall identify the types of materials used for equipment operation (including fuel and hydraulic fluids), and measures to prevent and materials available to clean up hazardous material and waste spills. The SWPPP or SWMP shall also identify emergency procedures for responding to spills. The SWPPP shall also include dust control practices to prevent wind erosion, sediment tracking, and dust generation by construction equipment, including during gravel processing.

The BMPs presented in either document shall be clearly identified and maintained in good working condition throughout the construction process. The construction contractor shall retain a copy of the approved SWPPP or SWMP on the construction site and modify it as necessary to suit specific site conditions through amendments approved by the Central Valley RWQCB, if necessary.

The City and all contractors will abide by regulations governing hazardous materials transport are included in CCR Title 22, the California Vehicle Code (CCR Title 13), and the State Fire Marshal Regulations (CCR Title 19). Transport of hazardous materials can only be conducted under a registration issued by the California Department of Toxic Substances Control. Construction contractors would be required to use, store, and transport hazardous materials in compliance with Federal, State, and local regulations during project construction.

Timing: Before and during construction.

Responsibility: City/Water Forum and Construction Contractor(s).

6. *Reptiles. The EA/IS/MND states that Western pond turtle habitat on the restoration and borrow sites is unlikely to be used for nesting, due to unsuitable substrate conditions. Therefore, impacts to reptiles including Western pond turtle are less than significant.*

Although the EA/IS/MND does mention that Western pond turtle basking may take place within the Project sites, there is no mitigation provided for potential impacts to the species during construction. Commission staff believe this impact is potentially significant and mitigation is needed to compensate for possible disturbance of this species.

Response: The presence of Western pond turtle in the disturbed areas is highly unlikely and substantial evidence has not been provided to support a conclusion that this impact is potentially significant. However, to fully implement your mitigation recommendations, the City has clarified proposed Mitigation Measure BIO-4, as presented in the previous section.

CULTURAL RESOURCES

1. *Discovery of Unknown Cultural Artifacts. Page 35 of the EA/IS/MND discusses cultural resources in the Project area and concludes that "... given the physical context of the site, situated in the river and modern sand bars and sediment, archaeological sensitivity is extremely low. Therefore, the proposed project would have no impact."*

Commission staff disagrees with the City's conclusion. Since dredging will occur during flood plain and side channel creation and enhancement, there is the potential (however small) for discovery of unknown cultural artifacts. Commission staff recommend the impact be change to potentially significant with incorporation of MM TCR-1b, which appears to mitigate this impact.

Response: The presence of unknown cultural artifacts in the disturbed areas is highly unlikely and substantial evidence has not been provided to support a conclusion that this impact is potentially significant. However, to fully implement your mitigation recommendations, the City has clarified proposed

Mitigation Measure TCR-1b by adding the following text at the end of the mitigation measure:

The title to all archaeological sites, and historic or cultural resources on or in submerged lands of California is vested in the State and under the jurisdiction of the California State Lands Commission (Pub. Resources Code, § 6313). Additionally, 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 again for your review and comments on the EA/IS/MND. If you have any questions or need additional information regarding the proposed project or proposed mitigation clarifications, please contact me at (916) 808-1993 or by email at lallen@cityofsacramento.org.

Sincerely,



Lilly Allen
Project Coordinator

cc: Cynthia Herzog, Senior Environmental Scientist, California State Lands Commission
Jamie Garrett, Staff Attorney, California State Lands Commission